

BREAKING DOWN BARRIERS:

Tackling racism in Ireland at the level of the State and its institutions

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*“Racism must be consciously combated
and not discreetly tolerated”*

Nelson Mandela



“The 30-year delay between Ireland’s signing of the CERD Convention and its ratification emphasises the failure to take the issue of racism seriously until very recently, as does the official failure to collect even basic statistics on the numbers of members of ethnic minorities in the state. And, regrettably, we feel that the Government’s First Report under the Convention still appears to underestimate the scale of the challenge that we face as a result of the changes in Irish society and the growth of racism. We welcome, however belated, the Government’s ratification of the Convention and the opportunity it provides to inform the CERD Committee of the problems we face in Ireland and what we feel is the inadequacy to date of the Government’s response in some key areas.”

Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Racial Discrimination in respect of Ireland’s First National Report under the Convention on the Elimination of All Forms of Racial Discrimination (2005)

Table of Contents

Preface	i
Introduction	iii
Methodology	iv
Part I: LEGAL AND CONCEPTUAL FRAMEWORK	1
1. 'Race', Ethnicity and Racism	2
1.1 'Race'	2
1.2 Ethnicity	3
1.3 The Definition of Racial Discrimination under International Law	3
1.4 Affirmative Action	4
1.5 Racism at the level of the State and its institutions	5
1.5.1 At the level of legislation	6
1.5.2 At the level of the Executive	6
1.5.3 At the level of the Judiciary	6
1.5.4 At the level of Immigration and Asylum policy	7
1.5.5 Individual Government and Political Representatives	8
1.6 Non-state Actors and State Racism	9
1.6.1 Media	9
1.6.2 Impact on Non-state Institutions	9
2. Institutional Racism	15
2.1 Identifying Institutional Racism	16
3. Tackling Racism at the level of the State and its institutions	21
3.1 A Cohesive Mainstream Strategy	21
3.1.1 The Duty to Respect	22
3.1.2 The Duty to Protect	22
3.1.3 The Duty to Fulfil	22
3.1.4 Positive measures	22
3.2 Evidence-Based Policy-Making	24
3.3 A Working definition	25
3.4 A Code of Practice	25
3.5 Effective Sanctions and Remedies	25
3.6 Human Rights Training	27
3.7 Targeted Recruitment	28
3.8 Evaluation	29

Part II: IRELAND

1	Background	33
1.1	Irish National Identity	33
1.2	The History of Racism in Ireland	33
1.3	The History of Minority Ethnic Groups in Ireland	34
1.4	Travellers as a Minority Ethnic Group	34
1.5	Participation of Minority Ethnic Groups	35
1.6	Minority-led NGOs	36
1.7	Views of Vision 21 Consultation Participants	36
1.7.1	Traveller Participants	36
1.7.2	Integration and acceptance	38
1.7.3	Root causes of Indirect Institutional Racism	39
2.	Human Rights and Anti-Discrimination under Irish Law	41
2.1.1	The Constitution	41
2.1.2	The Citizenship Referendum	41
2.2	Anti-Discrimination Legislation	42
2.3	Prohibition of Incitement to Hatred Act	44
2.4	European Convention on Human Rights Act	45
2.5	Belfast Agreement	45
2.6	Specialised Bodies and Independent Institutions	47
2.6.1	The Equality Authority	47
2.6.2	The Equality Tribunal	47
2.6.3	The Irish Human Rights Commission	48
2.6.4	The National Consultative Committee on Racism and Interculturalism	48
3	Cross-Departmental Strategic Plans and Practices	53
3.1	Central Statistics Collection	53
3.2	National Action Plan Against Racism	54
3.3	Task Force on the Travelling Community	55
3.4	Other Plans and Strategies	56
3.5	A National Human Rights Action Plan?	56
3.6	UN Migrant Workers' Convention	57
4.	Examintaion of Key Government Departments	61
4.1	The Department of Justice, Equality and Law Reform	61
4.1.1	Data on Racism Incidents	62
4.1.2	Effective Remedies	63
4.1.3	The Criminal Justice System	64
(A)	An Garda Síochána	64
(B)	The Judiciary	65
(C)	The Prison Service	66
4.1.4	The Asylum and Immigration Systems	68
(A)	Immigration	68
(B)	Asylum	69
(C)	Direct Provision System	69
(D)	Appeals	71
4.1.5	A Department of Equality and Human Rights?	72

4.2	The Department of Enterprise, Trade and Employment.	74
4.2.1	Experiences of Vision 21 Participants	74
4.2.2	Access to the Labour Market for People from the Traveller Community.	76
4.2.3	Access to the Labour Market for Asylum Seekers and Refugees ...	77
4.2.4	The Enforcement of Ireland's Employment Legislation	77
4.2.5	Migrant Workers	78
4.2.6	Women from Minority Ethnic Communities.	79
4.3	The Department of Health and Children.	79
4.3.1	Experiences of Vision 21 Participants	79
4.3.2	The Health Service as an Employer	80
4.3.3	The Department of Health as a Service Provider	82
4.4	The Department of Education and Science	83
4.4.1	Access to Education	84
(A)	The 'Intersectionality' of Racial and Religious Discrimination	84
(B)	Access to Education for Travellers.	85
(C)	Access to Third Level Education.	85
(D)	Participation of Representatives of Minority Ethnic Communities in Decision-Making.	85
4.4.2	Low Levels Of Educational Achievement in Minority Ethnic Communities	86
(A)	Language Support.	87
(B)	Minority Languages.	87
(C)	Guidelines on Culturally Appropriate Education	87
	Conclusions and Recommendations.	98
	12 Key Recommendations to Government.	102
	Annex 1 – Recommendations from Participants in Vision 21 Consultation	105
	Annex 2 – Suggested Indicators.	107

Glossary of Acronyms

CERD Committee	UN Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
DJELR	Department of Justice, Equality and Law Reform
DOHC	Department of Health and Children
DES	Department of Education and Science
DETE	Department of Enterprise, Trade and Employment
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECRI	European Commission against Racism and Intolerance
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NCCRI	National Consultative Committee on Racism and Interculturalism
NGO	Nongovernmental Organisation
UN	United Nations

Preface

In Ireland, discussions on racism have tended to focus exclusively on the acts of individuals, whether public or private, rather than how the state itself operates - through its legislation, policy or practice - through its institutions or as a whole. Discriminatory policies by governments may intentionally target an individual or group that does not conform to the societal 'norm'. Often, however, discrimination by the state is unintentional, but no less harmful to its victims for that fact. Both forms can be quite subtle and hidden, and particularly obscured where, as in Ireland, there is little official data available to analyse the actual impact of what appear to be discriminatory measures.

For this reason, Amnesty International asked the Irish Centre for Human Rights at NUI Galway to conduct a study focusing on racism at the level of the state and its institutions. We also commissioned a research agency, Vision 21, to consult with individual members of minority ethnic communities, whose experiences in their interactions with agents of the state, and recommendations for the way forward, informed this ICHR study.

The right to be free from racial discrimination is a fundamental principle of human rights law. Especially where it occurs at the level of the state or its institutions, racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights because of their colour, ethnicity, descent or national origin. It impoverishes society, especially when we look to the future generations of children of those discriminated against by the state.

In 2001, when identifying a significant increase in racist and xenophobic incidents, and irresponsible media and political commentary, Amnesty International's Irish section launched a campaign calling on the Government to show Leadership Against Racism in Ireland. Its main purpose was to highlight the problem, and warn that there was a rapidly shrinking window of opportunity for introduction of international best practice in anti-racism. We highlighted eight key recommendations, including the need for the introduction of an independent body to monitor racially motivated incidents; concrete measures for identifying and eliminating institutional racism within public bodies; comprehensive programmes of education; and effective legislation on anti-racism to include reform of the ineffective Prohibition of Incitement to Hatred Act.

Despite some welcome initiatives, Government has failed to respond adequately to the challenge. Even the Government's own public awareness 'Know Racism' campaign, launched in 2001 as a three-year initiative, saw a swift decline in its resources. Its funding was actually cut by 63 per cent in 2003, and a further 76 per cent for 2004. The 2005 National Action Plan Against Racism was a welcome development, but without adequate accountability and resourcing across government departments, and measurable outcomes, will be little more than lip service.

Even while the National Action Plan was being formulated, the Government introduced a series of measures that seriously undermined its stated commitment to anti-racism. The Immigration Act, 2004 effectively legislated for racial profiling, and did little to foster a climate of respect for immigrants. The Equality Act, 2004 failed to adopt important recommendations by the Equality Authority, and eroded many existing protections. Despite engaging Travellers' repre-

"Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

International Convention
on the Elimination of all
Forms of Racial
Discrimination

representatives in organising its anti-racism initiatives, the Government sought to deny the very existence of Traveller ethnicity in its First Report to the UN Committee on the Elimination of Racial Discrimination. The Government has also refused to ratify one of the seven core UN human rights treaties, the Migrant Workers' Convention.

Amnesty is a vocal opponent of the worst excesses of racism throughout the world - from the rise of anti-Semitism and Islamophobia, to the flagrant discrimination against Roma in Central and Eastern Europe, to the rights of 'non-citizens' 'erased' in Slovenia. In the name of the fight against terrorism some governments have failed to uphold the principles they have espoused in intergovernmental settings.

It is essential that we in Ireland understand and accept that racism exists here. Racial discrimination persists in virtually every society, and in every state's institutions. This does not mean that Ireland is a racist or xenophobic state, but rather accepts the reality and the challenge. Where states show the courage of their conviction to firmly identify and weed out discriminatory laws, and discriminatory policies and practices within its institutions, it can be combated. We can still learn from the terrible mistakes made by other countries over many years.

This report focuses on a human rights-based approach to tackling racism at the level of the state and its institutions. Under international human rights law, the state has a duty to ensure that its laws and institutions identify and address the manifestations, root causes and consequences of discrimination, and secure adequate remedies for those who suffer violations of their fundamental right to equal treatment.

This report does not aim to be a comprehensive analysis of all forms of racism at the level of the State and its institutions. Rather, it is intended as a contribution to the debate that must be taken forward on this issue, especially in following up on 2005 recommendations to Ireland by the UN Committee on the Elimination of Racial Discrimination. We earnestly hope that the Irish Government will take this report as it is intended, i.e. as a constructive engagement with what is a difficult but essential responsibility for government to undertake.

We are indebted to the Irish Centre for Human Rights at NUI Galway for this collaboration. We are also indebted to the work of the NGO Alliance in advocating for government compliance with its human rights obligations under the UN Convention on the Elimination of All Forms of Racial Discrimination; and to those who have advised and commented on this report and our ongoing work on this serious human rights issue.

Colm Ó Cuanacháin
Secretary General
Amnesty International (Irish section)

Introduction

This report has set out to explore the existence of racism at the level of the State and its institutions in Ireland, and to identify gaps in the State's anti-racism framework. Moreover, it seeks to contribute proactively to the development of Ireland's anti-racism framework through the proposal of concrete solutions in order to eliminate and safeguard against racism at the level of the State and its institutions, in keeping with Ireland's obligations under international human rights law. In 2001, Amnesty International's Irish section commissioned a study among minority ethnic communities on their views on and experiences of racism in Ireland.¹ While one state body, the Garda Síochána, featured heavily in that study, it otherwise focused primarily on public racism. This research builds on that work by sharpening the focus on government and the institutions of State.

Before looking at the situation in Ireland and evaluating it in relation to the State's international legal obligations, this report sets out to clarify how racism at the level of the State and its institutions operates, in recognition of the fact that racism needs to be acknowledged and understood before it can be effectively tackled. In order to be able to address the different forms which racism may take and its impact on victims of racial discrimination, concepts such as 'race' and ethnicity shall also be examined.

Following an analysis of the factors which contribute to and safeguard against the existence of racism at the level of the State and its institutions in Ireland, this report shall then focus on the following government departments:

- The Department of Justice, Equality and Law Reform
- The Department of Health and Children
- The Department of Trade, Enterprise and Employment
- The Department of Education and Science

These departments have been chosen because they govern areas which have a significant effect on the daily lives of people from minority ethnic communities. All other departments that might have been addressed, but for reason of time and capacity reasons could not be reviewed in this report.²

The approach of this report identifying whether institutional racism exists in the purpose or effect of the state's law, policy or practice is two-pronged. In addition to examining the state's structural framework of law and policy, with particular focus on four key government departments and the institutions which come within their remit, through incorporating findings from a parallel consultation with some minority ethnic groups, it shall document their experiences in their interactions with key agents of the state.

Footnotes

1. Loyal and Mulcahy, *Racism in Ireland: The Views of Black and Ethnic Minorities* (2001), Amnesty International (Irish Section).
2. For examples, the Department of Social, Community and Family Affairs (e.g. regarding the non-entitlement of asylum seekers to child benefit), and the Department of the Environment, Heritage and Local Government (e.g. regarding unsatisfactory provision of Traveller accommodation).

“[D]espite efforts undertaken by the international community, Governments and local authorities, the scourge of racism, racial discrimination, xenophobia and related intolerance persists and continues to result in violations of human rights, suffering, disadvantage and violence, which must be combated by all available and appropriate means and as a matter of the highest priority, preferably in cooperation with affected communities.”

Declaration adopted at the World Conference Against Racism, South Africa, in 2001

“Direct racism and overt expressions of racism have dominated the debate on racism in Ireland in recent years. Racially motivated attacks, and discrimination occurring in pubs, buses, restaurants and accommodation are apparent in the reports from the Gardaí and the National Consultative Committee on Racism and Interculturalism These attitudes and behaviours of the individuals who perpetrate the behaviour are, conceptually, what many regard as racism. The idea of examining racism as being state engineered or institutional is less accepted.”

Racism at the level of the State and its institutions in Ireland: A consultation with members of minority ethnic communities (2006)

Vision 21 for Amnesty International (Irish section)

Methodology

A great deal of attention has been given to the clarification of what is meant by the terms 'institutional racism' and 'State racism'. These terms are investigated through norms firmly rooted in international human rights law. Indicators of these forms of racism are drawn from those established in judicial settings and by international human rights bodies. Parallel participatory research with members of minority ethnic communities on their experiences in their interactions with agents of the State conducted in early 2005 by a research consultancy, Vision 21, for Amnesty International for the purpose of this report, informed the areas of focus and recommendations herein. Research carried out in Ireland, as well as in other jurisdictions, into racism at the level of the State and its institutions has also informed this report's approach.

The question of whether racism at the level of the State and its institutions exists as a problem in Ireland was examined using a two-pronged approach, with equal attention been given to document analysis and dialogue with interested parties, including representatives from government departments, statutory bodies responsible for addressing racism, representatives of minority ethnic communities and ordinary people from minority ethnic groups.

While significant attention has been paid to the existence of legal standards, both at national and international level, the overarching focus of this report is on the effective enjoyment of human rights, in particular freedom from racial discrimination, i.e. de facto rather than just de jure equality. Therefore, an emphasis is placed on the analysis of the effectiveness of policies on the ground. Additionally, recognising the diversity within minority ethnic groups, both in terms of the complexity of ethnicity and the special needs of people within minority ethnic groups who experience discrimination on other grounds (for example, women; people with disabilities; lesbian, gay, bisexual and transgender people; and older people), is central to this report's approach. This is not to say that the report confines itself to looking at minority ethnic groups; rather, in keeping with good practice guidelines in the field, it seeks to interrogate the values and practice of the majority population.³

In addition to the separately commissioned research into the perspectives of individuals from minority ethnic groups, interviews were conducted by the authors of this report with representatives of each of the government departments under review, as well as two statutory bodies with responsibility for anti-racism, in order to assess their understanding of their obligations and to obtain an idea of prevailing attitudes towards racism and anti-racism within State bodies. In keeping with this report's aim to accurately reflect the concerns of people from minority ethnic communities, consultation was undertaken with representatives of minority ethnic groups prior to the drafting of agenda for these interviews.

Consultation with minority ethnic groups

The principles which guide this report include recognition of the importance of consulting and engaging with minority ethnic groups on an individual level and through their representatives insofar as possible. Parallel participatory research with members of minority ethnic communities on their experiences in their interactions with agents of the State was conducted by a research consultancy, Vision 21. The views and recommendations expressed by participants in that research informed this report, and extracts and participants' quotes are included throughout.⁴ Moreover, an effort has been made throughout this research not to

purport to represent minority ethnic groups, and to produce research that is “for ethnic minorities ... rather than about them”.⁵

A significant issue in the Vision 21 research is that the focus groups, deliberative groups and one-to-one interview group comprised just members of the Traveller community and various migrant groups (asylum seekers, refugees, migrant workers, international students). In recruiting for and arranging the group discussions, while from the outset, efforts were made to include indigenous Irish minority ethnic groups, Vision 21 was unable to include representation from this target group beyond members of the Traveller community. This group, Vision 21 reported, was less visible and generally more difficult to reach, although their efforts were constrained by the short timeframe allocated. Their difficulty in identifying and involving indigenous Irish ethnic minority groups was presented as a relevant finding, in that they felt that when government is consulting with minority ethnic communities, it must make significant effort to identify and involve this target group, and to cater for this in its recruitment mechanisms.

The experiences documented by Vision 21 informed the themes addressed in this research and interviews with the four government departments, and are discussed throughout this report. Their recommendations for government action have been incorporated throughout the report, and detailed in Annex 1. They can be summarised as: 1. Improve information services for minority ethnic communities; 2. Provide culturally appropriate services; 3. Review policies and mainstream services; 4. Provide anti-racism training and education; 5. Improve media representation; and 6. Develop NGOs representing minority ethnic groups.

Overarching conclusions

One of the key recommendations from the 2001 World Conference Against Racism, Xenophobia and Related Intolerance was that all member states should adopt National Action Plans to combat racism. The Irish Government is one of the few to have done so, and has been commended for this step by the UN Committee on the Elimination of Racial Discrimination.⁶ The National Action Plan Against Racism launched in January 2005 officially highlighted for the first time the need to address racism at an institutional and systemic level in Ireland. The Action Plan identified the need to ensure that state institutions recognise and make reasonable accommodation of cultural diversity and take appropriate positive action as necessary. There is a strong emphasis in the Action Plan on mainstreaming equality and anti-racism within government departments and agencies.

However, the Government's overall strategy for identifying and addressing racism at the level of the State and its institutions is at best confused. Clear examples of blatantly discriminatory laws and policies are found throughout the report. However, in many parts of this report, the lack of disaggregated data available on the positive or negative impact of state laws and policies on minority ethnic groups excludes these areas from definitive analysis, but the prima facie case is made in many instances that, on their face, some laws and policies are inherently discriminatory against minority ethnic groups, and hence indicate institutional racism. A set of indicators is provided in Annex 2. We recommend that Government address these areas as a priority. Where indications of state racism are based on prima facie evidence of inherent potential to discriminate, government should either rebut these presumptions with data supporting the contrary position, or take meaningful steps to investigate and address them.

While each of the four government departments provided representatives for interview, in

general, there was a sense on the part of the research team that most of the government departments under review were reluctant to be interviewed on the subject. Also, the research team found that, in some cases, the appropriateness of nominations by Ministers of officials to be interviewed on behalf of the department was questionable. Despite the best efforts of the research team, the team felt they were not given access to the most appropriate officials. For instance, the Department of Health and Children provided just representatives from the Health Services Employers Agency. In some cases, the process for departments' selecting their interview nominees was protracted. Time constraint was frequently cited as a reason for desiring not to grant an interview. While conscious that government departments are complex organisations, and advance information is needed to ensure that relevant department officials attend such meetings, the research team found that it experienced difficulty in obtaining interviews and an unusual amount of information was requested in advance of interviews, indicating a perceived reluctance to engage with the subject matter which the team has attributed to the stigma attached to racism.

Footnotes

3. NCCRI, Irish Health Services Management Institute (IHSMI) (2002), *Cultural Diversity in the Irish Health Sector: Towards the Development of Policy and Practical Guidelines for Organisations in the Health Sector* p. 7: "Change is not about helping 'them' to join us but about critically looking at 'us' and rooting out all aspects of our culture that inappropriately exclude people and prevent us from being inclusive in the way we relate to employees, potential employees and clients of the health service". See also Lentin R, "Anti-racist responses to the racialisation of Irishness: Disavowed multiculturalism and its discontents", in Lentin and McVeigh (eds.) (2002), *Racism and Anti-Racism in Ireland* pp. 226-238 on the need to interrogate the culture and values of the dominant ethnic group, particularly at p.228, 233.
4. Vision 21, *Racism at the level of the State and its institutions in Ireland: A consultation with members of minority ethnic communities* (2006), Amnesty International (Irish section). Vision 21 operates on the basis of an ethical code of practice that governs its methodology. Participants were informed of the nature of the research, including its exploratory nature, before being asked to give their consent to participate and guarantees of confidentiality and anonymity.
5. Goldstone, "Rewriting You': Researching and Writing about Ethnic Minorities", (2000), Chapter 17 in MacLaghlan and O'Connell (eds.), *Cultivating Pluralism: Psychological, Social and Cultural Perspectives on a Changing Ireland*, Oaktree Press: Dublin, at p. 206.
6. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N Doc. CERD/C/IRL/CO/2.

Part 1

LEGAL AND CONCEPTUAL FRAMEWORK

"The equal dignity of all human beings" or the principle of non-discrimination constitutes "one component of the basic message of human rights".⁷ The preamble contained in all of the major international human rights treaties recognises "the inherent dignity and the equal and inalienable rights of all members of the human family". This is stated succinctly in the 1978 UNESCO Declaration on Race and Racial Prejudice, at article 9.1:

The principle of the equality in dignity and rights of all human beings and all peoples, irrespective of race, colour and origin, is a generally accepted and recognized principle of international law. Consequently any form of racial discrimination practised by a State constitutes a violation of international law giving rise to its international responsibility

The importance of the principle of non-discrimination is such that it is the crux of human rights protection.⁹ Indeed, some legal commentators, including the Inter-American Court of Human Rights, have argued that the prohibition of discrimination is a norm of jus cogens in international law, which means that it ranks among the highest norms of public international law as recognised by the international community of States.¹⁰ Its centrality to the protection of all human rights protection is illustrated by the predominance of provisions relating to non-discrimination in international law. The interpretative provisions of all of the major international human rights instruments from the Universal Declaration of Human Rights (UDHR) to the UN Convention Relating to the Status of Refugees contain specific clauses prohibiting discrimination.

Moreover, 'race' is mentioned specifically in all of these instruments as a ground upon which discrimination is expressly prohibited. The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) was adopted in 1965. The first in a line of international treaties aimed at tackling discrimination, it is devoted in its entirety to the prohibition and elimination of racial discrimination.¹¹ That it was adopted even before the UN General Assembly had finalised the texts of the two main international human rights instruments, the International Covenant on Civil and Political Rights¹² and the International Covenant on Economic, Social and Cultural Rights¹³, emphasises the gravity of the aim of combating racial discrimination to the Member States of the UN.

While the importance of combating discrimination as a means of ensuring the effective enjoyment of all human rights is recognised on an international level, this has not translated into a clear understanding of what racism is, how it operates and how it should be combated.¹⁴ Indeed, much confusion surrounds the very concept of 'race', with much public opinion still being that 'race' denotes a biological or scientific difference in human beings in spite of the fact that 'race' theories have long since been discredited.

On 10 December 1948, at the Palais de Chaillot in Paris, the then 58 Member States of the United Nations General Assembly adopted the Universal Declaration of Human Rights, proclaimed it a "common standard of achievement for all peoples and all nations."



United Nations drafting the Universal Declaration of Human Rights

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“Racism is a product of human history, a persistent phenomenon that recurs in different forms as societies develop, economically and socially and even scientifically and technologically, and in international relations. In its specific sense, racism denotes a theory, which purports to be scientific but is in reality pseudo-scientific, of the immutable natural (or biological) inequality of human races, which leads to contempt, hatred, exclusion and persecution or even extermination.”

Mr. Maurice Glélé-Ahanhanzo, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (1994)

In light of these misunderstandings, before focusing on racism at the level of the State and its institutions, the concepts of 'race', ethnicity and racism in its various forms shall be discussed in sections 1.1 and 1.2 in turn. Finally, in keeping with the action-oriented approach of this report, strategies for tackling racism at the level of the State and its institutions shall be discussed in section 3. The State's international legal obligations with regard to combating these forms of racism shall be emphasised throughout this section.

1. 'RACE', ETHNICITY AND RACISM:

1.1 'Race'

The UN has clearly confirmed that there is only one human race and that humans are not divided into different groups according to 'race'. Article 1.1 of the UNESCO Declaration on Race and Racial Prejudice reads: "All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity."¹⁵ It is important to note when we speak or hear of 'race' that 'race' theory was a 'scientific' theory developed in the eighteenth century, which sought to justify colonization on the basis that the darker a person's skin, the more inferior they were deemed to be, with the white man placed at the top of the 'race' hierarchy.¹⁶

Thus 'race' is a social construct based on superiority and inferiority, which aims to legitimate the claims of one group to dominance by degrading the claims of the other group to equal rights.¹⁷ The definition of racism contained in the aforementioned UNESCO Declaration on Race and Racial Prejudice clarifies that racism is not about colour, but prejudices concerning hierarchy, inferiority and superiority drawn along racial or ethnic lines or "any theory involving the claim that racial or ethnic groups are inherently inferior."¹⁸ This has obvious implications as regards understanding anti-Traveller racism and anti-Semitism. While 'race' theories have long since been discredited officially, the power of such theories should not be underestimated. Indeed, their enduring nature can be seen in the language of the ICERD Convention. The fact that the term 'race' is used in this and other Conventions, with no explanation as to what it meant, is reflective of the attitude held by many of the drafters at the time: that 'race' constituted a biological fact, in addition to a ground of prohibited discrimination.¹⁹

It must be remembered that these theories were used to justify colonialism, a period that has had a profound impact on the present world order, with the developed world having accumulated its wealth by exploiting the developing world, with the latter still trying to surmount the consequences of colonialism. The fallout from colonialism may also be seen in the association between poverty, ethnicity and perceived inferiority. However, both the problems of the developing world and the over-representation of minority ethnic groups in the lower echelons of the socio-economic scale in the developed world have a tendency to feed into stereotypes about 'race' rather than fuel questions about why poverty is often 'colour-coded'.²⁰ The relationship between 'race' theories and colonialism was explicitly recognised by the international community at the 2001 World Conference Against Racism:

"We recognise that colonialism has led to racism, racial discrimination, xenophobia and related intolerance. We acknowledge the suffering caused by colonialism and affirm that wherever and whenever it occurred, it must be condemned and its reoccurrence prevented. We further regret that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today."²¹

The perniciousness of 'race' theories, which may influence individuals' subconscious even though they would not necessarily consider themselves 'racist' is recognised in the UNESCO Declaration, which explicitly sets about demystifying racist attitudes and stereotypes. Article 1.5 states:

The differences between the achievements of the different peoples are entirely attributable to geographical, historical, political, economic, social and cultural factors. Such differences can in no case serve as a pretext for any rank-ordered classification of nations or peoples.²²

1.2 Ethnicity

Like 'race', the concept of ethnicity is commonly misunderstood, with the term 'ethnic' often being taken to mean not indigenous.²³ However, an ethnic group is a cultural community, often defined by a common history, language and traditions²⁴. Jurisprudence established in the United Kingdom under the 1976 Race Relations Act has identified "a long shared history of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive" and "a cultural tradition of its own" as essential features of an ethnic group.²⁵ While these criteria may be considered objective indicators of ethnicity, subjective factors are also of the utmost importance, as is evident from the inclusion of the condition that an ethnic group be self-conscious of its history. Indeed, the UN Committee on the Elimination of Racial Discrimination has stated that self-identification shall be the main marker of an ethnic group,²⁶ placing the onus on parties who disagree with the classification of an ethnic group to prove otherwise.²⁷

The UNESCO Declaration on Race and Racial Prejudice also emphasises the importance of self-classification: Article 1.2 reads: "All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such."²⁸ The recognition of ethnicity as a self-defined concept is also important with regard to recognising the complexity of ethnicity. Ethnicity is not a fixed category: in the same way that an ethnic group's identity may evolve over time, it is also important to be aware of the existence of difference within ethnic groups.

1.3 The Definition of Racial Discrimination under International Law

Article 1.1 of the ICERD Convention provides the following definition of racial discrimination:

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The definition emphasises two key points, which should be noted in relation to this report's analysis of racism at the level of the State and its institutions:

- The different forms which racial discrimination may take
- The impact of discrimination on the victim

As stated by the UN Special Rapporteur on religious intolerance in his preparatory paper for



In June 2002, 50 Meskhetian families living in Kiyevskaya, Krasnodar Territory, went on a hunger strike in protest at the authorities' failure to grant them citizenship of the Russian Federation, to which they are entitled under federal law. The cards they are holding are headlined "Give the children a passport!" and are addressed to the Minister of the Interior of the Russian Federation, reminding him of the state's obligation to protect the rights of all people living within the Russian Federation.

© School of Peace

“To cure inequality is simple: one need only ensure that the same right is extended to all according to the same standard of measurement. But if nothing more is done any entrenched inequality will be ignored. A level playing field will not serve the purpose if the score piled up before the levelling is still on the board.”

Vinodh Jaichand,
The Restitution of Land Rights: A Workbook
(1997), Lex Patria:
Johannesburg

the World Conference Against Racism, racism takes many forms and varies in intensity.²⁹ It can be hidden or blatant, subtle or aggressive, violent or non violent. In addition to its various guises mentioned in the ICERD definition of racism, it may take the relatively innocuous form of stereotyping or labelling or the more blatant form of “intolerance”. However, the net result of discrimination is the same, regardless of the form it takes: it impedes people’s enjoyment of human rights, both with regard to a specific human right and human rights in general.³⁰

In addition to taking different forms, it is important to recognise that racial discrimination affects victims in different ways, particularly if they are also at risk from discrimination on other grounds. The UN Committee on the Elimination of Racial Discrimination (CERD Committee) has observed that women are particularly vulnerable in terms of some forms which racial discrimination may take, such as sexual violence, and due to the temporary or informal nature of predominantly female employment sectors, such as domestic labour.³¹ Furthermore, policies that discriminate on religious grounds may also have a disproportionately negative impact on people from minority ethnic groups.

1.4 Affirmative action

By focusing in on the net result of discrimination, it becomes clear that state inaction, or the failure to act does not equal non-discrimination. On the contrary, it may constitute de facto discrimination, which is a violation under international law, as it may result in the perpetuation of effective inequality.³² This can manifest itself in a state failing to protect human rights of minority ethnic groups out of a confused sense of what is culture, and hence and undue deference to what its agents perceive to be a cultural issue rather than a human rights violation that cannot be justified on the ground of ‘culture’. A clear example is the well-documented failure of the German police service to protect women in the German-Turkish community from ‘honour killings’ where threats against women’s lives were reported and not acted on in the same manner as the service would have responded in other circumstances. However, states also have a duty to act by taking special measures to promote groups vulnerable to discrimination to a position of substantive equality. International law, including the ICERD Convention, recognises the principle of affirmative action in not alone permitting but requiring special measures to guarantee marginalised groups full and equal enjoyment of their human rights on the same basis as the majority population, provided that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.³³ The principle of affirmative action recognises that the implementation of the principle of non-discrimination based upon the assumption that all individuals and groups enjoy the same opportunities merely perpetrates inequalities.

That affirmative action constitutes a key component of the right to freedom from racial discrimination can be seen by the fact that the last five General Recommendations issued by the CERD Committee to clarify the scope and content of the articles contained in ICERD, have referred to affirmative action.³⁴ In spite of the importance given to it by the Committee, it remains a practice often misunderstood, particularly as its discussion is not generally located within the framework of international human rights law.

The confusion surrounding affirmative action or positive measures constitutes a formidable obstacle to the effective enjoyment of the right to freedom from racial discrimination, and to conceptualising discrimination and divining the nature of State’s duties under international

law to combat racial discrimination. As can be seen in the case of affirmative action, there is a discrepancy between the protection available to individuals and groups under international human rights law, and the public's perception of their entitlements arising from human rights – often the wider public does not recognise that special measures just redress an inherent imbalance to restore discriminated against groups to positions of equality, i.e. the state is no more than fulfilling their human rights, and see these as giving preferential treatment for no other reason than the recipient is a group more favoured by the state. The importance of the public's misperception of what non-discrimination actually entails, may be observed through its impact in that the principle is rarely realised in domestic legislation and practice.³⁵

A recent example of an affirmative action measure recommended by the CERD Committee is contained in its first concluding comments on Ireland's compliance with the ICERD Convention, in 2005:

"[M]embers of the Traveller community are not adequately represented in the State party's political institutions and do not effectively participate in the conduct of public affairs. (article 5(c)) The Committee invites the State party to consider adopting affirmative action programmes to improve the political representation of Travellers, particularly at the level of Dáil Éireann and/or Seanad Éireann."³⁶

1.5 Racism at the level of the State and its institutions

Despite the recognition of the principle of affirmative action and the fact that racial discrimination may occur at the level of institutional and State structures in ICERD in 1965 and numerous other UN documents since then,³⁷ the conception of racism as a phenomenon that is largely personal and attitudinal, persists in the public consciousness.³⁸ However, as noted by

Anti-racism provisions under the Council of Europe

While this report concentrates on the UN system of international law, it is important to note that the Council of Europe (CoE) has addressed racism and intolerance in many aspects of its work, deriving from human rights standards in the European Convention on Human Rights (ECHR). Ireland has incorporated the ECHR into Irish law, in the European Convention on Human Rights Act, 2003, which is explained in section... The ECHR does not prohibit discrimination per se, but Article 14 prohibits discrimination in how states respect, promote and fulfil the rights in other Articles of the ECHR. However, Article 1 of Protocol 12 to the ECHR prohibits discrimination in the enjoyment of "any right set forth by law". While Protocol 12 entered into force on 1 April 2005, Ireland has signed but not yet ratified it; but when Ireland does so, this will yield significant potential for expanding the anti-discrimination protections available in Irish law.

Its principal agency combating racism and intolerance is the European Commission against Racism and Intolerance's (ECRI), established in 1993. In its General Policy Recommendation No. 7, ECRI defines racism as: "the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons". ECRI produces country reports on every CoE member state, identifying problems and making recommendations, and its second report on Ireland was published in 2002. The Advisory Committee of the Framework Convention for the Protection of National Minorities and the Commissioner for Human Rights also make important contributions to the CoE's work against racism and intolerance.

"State Parties shall, when the circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of fundamental human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved".

Article 2.2, ICERD

“I have... no doubt about the long term impact of racial discrimination in economic and social terms. Poverty indexes broken down by race and ethnic groups often correlate strongly with other human development indicators such as access to health services, education and employment. In short, victims of racial discrimination are often also the primary victims of violations of the right to health, housing, employment and education.”

UN High Commissioner for Human Rights (2003)

one commentator: “It is the state that sets the tone and the tenor of race relations in society.”³⁹ For this reason, it is of the utmost importance that racism at the level of the State and its institutions be identified and vigorously challenged. In addition to personal and popular racism, state racism can occur on a number of levels.

1.5.1 At the level of legislation:

Legislation may discriminate directly or indirectly against people from minority ethnic groups. Examples of indirectly discriminatory legislation in Ireland include the Control of Horses Act, 1996 which constitutes a real impediment to the Traveller economy;⁴⁰ and the exemption in Ireland’s equality legislation which allows religious schools to give preference to children of the school’s faith in order to preserve the “ethos” of the school,⁴¹ which has a disproportionately negative impact on children from minority ethnic groups who are also members of minority religious communities, as the vast majority of State-run religious schools are Catholic, the majority religion in the State.⁴²

1.5.2 At the level of the Executive:

Racism may occur within the bodies responsible for the enforcement of the law, such as the police force, local authorities, the health service and so on. It can manifest itself in both the administration of public services and the enforcement of the law. It may occur unwittingly as a result of the fact that services are geared to meet the “cultures, expectations and needs of the majority group” to the detriment of minority ethnic groups, whose specific needs are not taken into consideration.⁴³ It may also be imposed on nongovernmental service providers that endeavour to meet the needs of minority ethnic groups on the states behalf, but are not provided with adequate government funding to do so. For instance, frontline services dealing with violence against women have sought additional government funding to identify, and adapt their services to meet, the cultural and language needs of migrant women, but this has not been provided.

Personal racism may also have an impact on the way that a public service is provided or a law is enforced. As Mama points out in her study of institutional discrimination within the British health service, there is a discrepancy between the theoretical equality of the welfare state and the de facto discrimination which results from discriminatory “notions and judgements about who are ‘really deserving’ and who are ‘undeserving’” of treatment.⁴⁴ She notes that the invasion of the health service by dominant prejudicial ideologies has resulted in the discriminatory treatment of people from minority ethnic groups, as well as other marginalized groups. As regards actual enforcement of the law by agents of the State, racism at the level of the police force may result in a disproportionate level of attention being paid to the enforcement of discriminatory laws coupled with the under-enforcement of anti-racism legislation. It may also result in people from minority ethnic groups being disproportionately targeted as suspects of crime.⁴⁵

1.5.3 At the level of the Judiciary:

Racism at the level of the judiciary can manifest itself in the disproportionate conviction, and sentencing of people from minority ethnic groups. It may also be evidenced in a failure to seriously deal with hate crimes against people from minority ethnic communities.⁴⁶ Furthermore, it can be seen in a state’s reaction to evidence of personal racism on behalf of judges. The Irish state has failed to sanction judges who made racist remarks in court in high-profile instances in 2003. While this inaction has serious potential to undermine the confidence of people from minority ethnic communities in the judiciary, it may also play a



The bulldozing and forcible eviction of a Roma settlement in the area of Riganokampos outside Patras, Greece, in June 2005

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considerable role in perpetuating popular racism, given the role of the judiciary in ruling on what is acceptable behaviour.⁴⁷

1.5.4 At the level of Immigration and Asylum law and policy:

It is at this level that State racism is most often talked about in contemporary discourse. The 2001 World Conference on Racial Discrimination affirmed that racism directed against non-citizens, particularly "migrants, refugees and asylum seekers, constitutes one of the main forms of contemporary racism".⁴⁸ The increased discrepancy between the formal protection available to everyone under international human rights instruments and the obstacles faced by non-citizens with regard to the effective enjoyment of their human rights has prompted the CERD Committee among others to take steps to clarify non-citizens' rights under international law. It also gave birth to the 1990 UN Convention on the Rights of All Migrant Workers and their Families.

The magnitude of the threat against non-citizens' rights and the gravity with which this is viewed at international level may be seen in the fact that the CERD Committee issued a General Recommendation in 2004 which clarified the duties of State Parties under ICERD in relation to non-citizens,⁴⁹ and devoted an entire day of the Committee's 64th session to a discussion on the issue. It may also be seen in the attention given to the issue by the CERD Committee in its other General Recommendations⁵⁰ and its examination of State reports.⁵¹ Similar actions have been undertaken by other treaty monitoring bodies.⁵²

While certain distinctions and differential treatment are permitted on the basis of citizenship such as the "right to participate in elections, to vote in and to stand in an election",⁵³ any distinctions drawn between citizens and non-citizens must have a "legitimate aim" and be compatible with the "objectives and purposes" of the Convention.⁵⁴ Additionally, they must be "necessary", minimal and "in accordance with law".⁵⁵ The minimal nature of this restriction is termed "the principle of proportionality".⁵⁶ If a restriction on the enjoyment of an individual's or group's human right is deemed to be disproportionate, based on discriminatory criteria, or not provided for in national law, it can be found to be a violation of the right in question.⁵⁷ As regards restrictions placed on the human rights of non-citizens, the Human Rights Committee has noted that there is a tendency among State Parties to the ICCPR to limit non-citizens rights in a manner which is incompatible with the Covenant. For example, in the case of *Gueye et al v. France*, the UN Human Rights Committee found the discrepancy in pension payments to citizens and non-citizens to be discriminatory.⁵⁹

Moreover, whatever the state's obligations under human rights treaties may be with regards to their citizens, there are international standards in customary international law that dictate adequate treatment of non-citizens based on the strong principle of non-discrimination that underpins all human rights law. Thus, while a state may be entitled to differentiate in favour of its citizens over political rights such as the right to vote, denying non-citizens basic rights constitutes a violation of their basic human rights obligations.⁶⁰

Policy objectives, such as deterrence of illegal immigration, may lead to the implementation of policies and practices, which systematically discriminate against and socially exclude asylum seekers and migrants.⁶¹ For instance, provisions that discredit the claims of asylum applicants coming from so-called 'safe' countries have been emerging on an international level.⁶² The drawing up of 'safe' country lists, and the processing of claims from nationals of these countries through flawed fast-tracking procedures, even where based on the stated intention

Judge John Nielan:
"The majority of shopping centres in this District Court area will be putting a ban of access to coloured people if this type of behaviour does not stop."

Judge Harvey Kenny:
"I don't think any Nigerian is obeying the law of the land when it comes to driving. I had a few of them in Galway yesterday and they are all driving around without insurance and the way to stop this is to put you in jail".

Irish Times, "Judges apologise to non-nationals for remarks about immigrants", 21.02.2003

of expediting asylum processes, is a direct threat to refugee protection and human rights in general. This practice of rejecting an individual's claim without properly examining its particular circumstances may result in individuals being returned to a state where they will be persecuted. This constitutes a violation of the norm of non-refoulement, a jus cogens norm of international law, which has the effect that it is non-derogable and binding upon all states in the international community. It is significant to note that Nigeria was placed on a list of prioritised applications in Ireland in 2003.⁶³ While Nigeria has not been officially categorised as 'safe' in the operation Ireland's refugee status determination system, there is a significant risk of claims by Nigerian applicants being prejudiced from the outset by virtue of this categorisation.

1.5.5 Individual government and political representatives

While human rights law defends the right to freedom of expression, and the public interest in having difficult issues politically debated, the right to be free from racial discrimination must be taken into account and protected. Public comments by political representatives regarding marginalised groups can have significant effect on the views and behaviours - where public statements come from those in government, they have the potential, even if indirectly, to lead to discriminatory attitudes and behaviour towards minority ethnic groups and within state institutions.

For instance, the attitudes of Ireland's public representatives in relation to Travellers elicited a strong response from the Traveller focus group in the Vision 21 consultation. The group noted that there have been many high profile expressions of personal racism in relation to Travellers by politicians across Ireland. Participants felt that such instances do not promote a harmonious relationship between Travellers and society in general. Moreover, they felt, if public representatives speak in a racist way, they can have a negative influence on staff in public bodies.

Inflammatory comments by political leaders about asylum seekers, and the use of language like 'bogus', 'spongers', 'floods', can exacerbate the potential for

increased discriminatory treatment of this group, not alone by the general population, but also within the asylum determination process and other state institutions. The NGO Alliance 'shadow report' to the UN CERD Committee in 2004 referenced the "persistent usage" by government representatives of emotive and factually incorrect terminology with regard to refugees and asylum seekers.⁶⁴ More recently, in May 2005, the Minister for Justice, Equality and Law expressed his dissatisfaction at having to process all asylum applications in compliance with UN standards, indicating a preference for screening people giving "'cock and bull' stories" at the airport.⁶⁵ Airport immigration officials are not permitted or trained to make these potentially life-or-death decisions, and in view of the lack of independent monitoring of decisions being made by immigration officials at Ireland's borders, this sort of commentary can prejudice an already flawed system.

While occasionally, such ill-judged statements made by government officials may be at



Liz O'Donnell from the Progressive Democrats, Labour leader Ruairi Quinn, with Fianna Fáil leader and Taoiseach Bertie Ahern, Fine Gael leader Michael Noonan, Sinn Féin's Mitchell McLaughlin, and Green Party leader Trevor Sargent at the launch of a Know Racism protocol for political parties in 2002

© Gareth Chaney/Photocall Ireland

variance with government policy, they can be no less damaging in terms of the potential signal this can send to officials within relevant government agencies. For instance, the same Minister, when interviewed in January 2006 while attending the opening of a Garda station, was asked about the planned deportation of a rejected asylum seeker to Nigeria where, she alleged, her daughters risked being forcibly subjected to female genital mutilation.⁶⁶ In response, the Minister said that female genital mutilation is a cultural issue in Nigeria and not grounds for seeking asylum. It must be assumed that Government policy on FGM complies with standards set by the UN High Commissioner for Refugees: "FGM, which causes severe pain as well as permanent physical harm, amounts to a violation of human rights, including the rights of the child, and can be regarded as persecution. [...] Therefore a woman can be considered a refugee if she or her daughters fear being compelled to undergo FGM against their will; or she fears persecution for refusing to undergo or allow her daughters to undergo the practice."⁶⁷ Nevertheless, a deeply unhelpful message was sent out to asylum decision-makers and to asylum seekers themselves about how FGM cases should be treated.

1.6 Non-state actors and state racism

Certain non-state actors can positively or negatively influence state racism, and the relationships of non-state bodies with minority ethnic groups can be directly affected by the state's discriminatory policies and practices.

1.6.1 Media

The representation of minority ethnic groups in the media may have a significant influence on state policy and practice, firstly through its direct influence on the personal opinion of state officials, and secondly, the media has the power to make certain issues politically-charged, in that local and national politicians are very sensitive to how issues are reported on and how they are being seen by their constituents to be responding to matters of public concern. The role of the media is clearly key. A state's failure to set standards for media reporting on issues relating to 'race' in accordance with best practice, with appropriate sanctions for non-compliance, makes the state complicit in fuelling racism. Under international law, in addition to being prohibited from violating individuals' and groups' human rights through discriminatory legislation, policy and practice, States are obliged to ensure that the rights of people living within their jurisdiction are not violated by third parties.⁶⁸ Moreover, as shall become evident in the next section's closer examination of the phenomenon of institutional racism, the fact that this type of discrimination may be perpetrated unconsciously does not diminish the State's obligation to stamp it out. Under Article 2 of ICERD, State Parties have an obligation to interrogate seemingly neutral practices and revise them in the event that they are found to be racist.⁶⁹

Racism in media reporting may take extremely subtle forms, such as racial stereotyping and paying a disproportionate level of attention to stories which paint people from minority ethnic communities in a negative light.⁷⁰ The National Consultative Committee on Racism and Interculturalism (NCCRI) has been to the fore in raising concerns about media reporting on issues relating to minority ethnic groups, and calling for an independent complaints procedure for dealing with such complaints against the media.⁷¹

The accountability of the Irish press, in the way it reports issues relating to minority ethnic groups, is inadequate. The National Union of Journalists adopted "Guidelines on Race Reporting" in 1998 to provide guidance to NUJ members on how issues related to 'race' should

"To date, little real attempt has been made by the Government to curb racism in the media and to prohibit incitement to hatred."

*NGO Alliance Shadow Report
In Response to the Irish Government's First National Report to CERD (2004)*

“Government policies have a great influence in the way of promoting this institutional racism. I will make an example for you. When you get your residency, everywhere you go, if you go to financial institutions... banks, hospitals, when you look for a job, the first thing they ask you is either where is your residency or your form of ID. But on the back of our ID it says this is not an ID. I don’t know what they expect us to do. It is confusing and contradicting. Normally, for anything this ID will not work”

Asylum seeker participant in Vision 21 consultation

be reported on. The guidelines state, “a journalist shall either originate nor process material which encourages discrimination, ridicule, prejudice or hatred”. However, the guidelines are not enforceable, and not all journalists are members of the NUJ. As recommended by the Task Force on the Travelling Community, they were to be developed into a Code of Practice to be adopted by all media institutions, but this has not yet been completed. Government has since proposed the establishment of an independent Press Council on a statutory basis. The NCCRI has recommended a selection procedure whereby membership of the Council would be comprised of representatives of the relevant publications and wider civil society, including minority ethnic groups.⁷²

Participants in the Vision 21 consultation discussed the role of the media in upholding and encouraging racist behaviour by state officials in Ireland. One participant had telephoned a television station to complain about the way they were representing and reporting on members of minority ethnic communities. Participants also discussed the dearth of visible minorities in the media. It was suggested by one participant that the government worked through the media in portraying asylum seekers in a negative light: “They [Government] throw to the media bad things about asylum seekers.”

1.6.2 Impact on non-state institutions

Where government provides funding for nongovernmental bodies to provide services to the public, but does not support and fund them to ensure that these services are appropriate, available and accessible to discriminated-against groups, the state is guilty of discriminatory treatment. This is all the more pressing where those non-state bodies are fulfilling the positive human rights obligations of the state.

For examples, only a limited number of community and voluntary violence against women support services in Ireland have the necessary training, staff or expertise to respond to the needs of minority ethnic women experiencing violence. Many are in the process of identifying training needs and evaluating the accessibility and suitability of their services. Yet, voluntary services with whom Amnesty International spoke for the purposes of its 2004 report on violence against women in Ireland, are aware that women from minority ethnic groups can be dissuaded from seeking help due to the lack of appropriate provision for their languages and cultures, or racist behaviour from staff or other service users.⁷³ While alert to the need for their services and training to be evaluated and adapted to meet these needs, all point to the obstacle of government underfunding with they are confronted in endeavouring to address these gaps.

State policies and practices can also manifest problems with other non-state bodies with which minority ethnic groups come in contact. For instance, asylum seeker participants in Vision 21 consultation referred to their experiences with financial institutions as examples of what they understand as institutional racism, in that they linked the problems they experienced with non-state institutions to government policies around identity documents issued to them by Government as the cause of their inability to conform to processes within these institutions - their passports are withheld during the asylum process and immigration cards given instead, but these cards expressly state that they are not identity documents.

Footnotes

11. International Convention on the Elimination of all forms of Racial Discrimination, adopted 21 Dec. 1965, entered into force 4 Jan. 1969, 660 UNTS 195. Several of these targeted instruments now exist, such as the UN Convention on the Rights of the Child, adopted 20 Nov. 1989, entered into force 2 Sep. 1990.
12. Adopted 16 Dec. 1966, entered into force 23 Mar. 1976.
13. Adopted 16 Dec. 1966, entered into force 3 Jan. 1976.
14. Note 7 above, at p. 137: "There is little evidence that countries understand the full implications of racial and social equality or are yet ready to embrace the long-term changes necessary to achieve it". This chapter's discussion on the view that many states expressed in their dealings with the Committee on the Elimination of Racial Discrimination that racism is something that happens in other countries supports the above conclusions.
15. UNESCO Declaration on Race and Racial Prejudice (1982), at article 1.1
16. See Ben Jelloun, *Le racisme expliqué à ma fille* (Racism explained to my daughter) (1998), Paris: Seuil for a discussion of 'race' theories and their origins
17. For a discussion on 'race' as a social construct, see Fredman, "International Human Rights Approaches to Racism" in Fredman (ed.) (2001), *Discrimination and Racism: The Case of Human Rights* Oxford University Press: Oxford, pp. 9-44, particularly pp. 9-11. This applies also to other forms of oppression by one dominant group over the other, e.g. sexism, ageism or ableism, and people can be subject to multiple typecasting and oppression where they are a member of more than one oppressed group.
18. UN Declaration on Race and Racial Prejudice (1978), adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at its twentieth session, on 27th November 1978, at article 2.1; Fanning (2002), *Racism and Social Change in the Republic of Ireland* Manchester University Press, Manchester and New York, at p. 159.
19. For an interesting discussion on how opinion was divided as to whether 'race' was a social construct or a biological fact see Keane, "International Law and the Ethnicity of Irish Travellers", (2005), *Washington and Lee 'Race' and Ethnic Ancestry Law Journal*, Winter 2005, vol.2.1 at p.2-3.
20. See Sivanadan, "Poverty is the New Black" (2001), *Race and Class* 43, no. 2, pp. 1-5.
21. Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance, at para.14. See also Castellino, "A Re-Examination of the International Convention for the Elimination of Racial Discrimination", at p. 22.
22. UN Declaration on Race and Racial Prejudice (1978), adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at its twentieth session, on 27th November 1978, at article 1.5.
23. NCCRI, March 2004, *The Importance of Recognising Travellers as an Ethnic Group*, Submission to the Joint Oireachtas Committee on Human Rights, at p.4. The NCCRI point out that it is often used as a synonym for "not Western".
24. See Smith, *National Identity*, (1991), Penguin: London, see also Selassaie, "Ethnic Federalism: Its Promise and Pitfalls for Africa", (2003), *Yale Journal Of International Law*, vol. 28, pp. 51-107, pp.58-9.
25. *Mandla v. Dowell Lee* [1983] 1 All ER. For an interesting discussion of this case, see Keane, note 19 above.
26. General Recommendation No. 8 "Interpretation and application of article 1(1) and (4) (identification with a particular racial or ethnic group", (1990), adopted by the Committee on the Elimination of Racial Discrimination during its thirty-eighth session. At para. 1: "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned".
27. Keane, "International Law and the Ethnicity of Irish Travellers", (2005), *Washington and Lee 'Race' and Ethnic Ancestry Law Journal*, vol.2.1, at p. 7
28. UN Declaration on Race and Racial Prejudice (1978), at article 1.2.
29. Andelfattah Amor, Special rapporteur of the Commission on Human Rights on religious intolerance, "Racial discrimination, religious intolerance and education" (2001), A/CONF.189/PC.2/22, at para 13. See also The Department of Justice, Equality and Law Reform, *Planning for Diversity: The National Action Plan against Racism* (2005) at p. 29. The Equality Authority defines discrimination as "less favourable treatment". Indirect discrimination is defined as what "occurs when practices or policies which do not appear to discriminate against one group more than another actually have a discriminatory impact. It can also happen where a requirement, which may appear non-discriminatory, adversely affects a particular group or class of persons" <http://www.equality.ie/whatis.shtml>, consulted 21.01.2005.
30. Andelfattah Amor, *ibid*.
31. General Recommendation number 25, "Gender related dimensions of racial discrimination" (2000), adopted

- by the Committee on the Elimination of Racial Discrimination during its 56th session, at para. 2.
32. "A violation of economic, social and cultural rights occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result". The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, *Human Rights Quarterly*, 20.3 (1998), pp. 641-704, at p. 695, at para.11. The Maastricht guidelines are guiding principles on the implementation of the rights contained in the ICESCR, they can also be applied to the implementation of the rights contained in other human rights instruments.
 33. ICERD, at article 1.4.
 34. See General Recommendation number 30, "Discrimination Against Non Citizens" (2004) adopted by the adopted by the Committee on the Elimination of Racial Discrimination during its 62nd Session; General Recommendation number 29, "Article 1, paragraph 1 of the Convention (Descent)" (2002), adopted by the Committee on the Elimination of Racial Discrimination during its 61st Session, particularly at paras. 6, 24, 28, 36.; General Recommendation number 28, "The follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance" (2002), adopted by the Committee on the Elimination of Racial Discrimination during its 60th Session; General Recommendation number 27, "Discrimination against Roma" (2000), adopted by the Committee on the Elimination of Racial Discrimination during its 57th Session, particularly at paras. 15, 19, 28-29, 39, 41; General Recommendation number 26, "Article 6 of the Convention" (2000), adopted by the Committee on the Elimination of Racial Discrimination during its 56th Session
 35. See UN Commission on Human Rights, Final Report submitted by Mr Marc Bossuyt Special Rapporteur on affirmative action, "Prevention of Discrimination: The concept and practice of affirmative action" (17 June 2002), UN Doc E/CN.4/Sub2.2002/21
 36. Note 6 above.
 37. The Durban Declaration places a great deal of emphasis on the importance of combating racism at the level of the State and its institutions. See Durban Declaration and Programme of Action, The World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance took place in Durban from 31 Aug.-Sept.2001.
 38. See Alana Lentin on "psychological explanations of racism". Alana Lentin, *Racism and Anti-Racism in Europe*, (2004), Pluto Press: London, at p. 131
 39. Bourne, "The Life and Times of Institutional Racism", (2001), *Race and Class* 43, no. 2, 7-21, at p.19. See also Sivanadan, note 20 above, at p. 3: "At first glance, British racism would appear to have three faces – State, institutional, popular – but, in effect, it has one face with three expressions, the face of the State".
 40. Control of Horses Act 1996, number 37 of 1996. See also Irish Traveller Movement (2002), *End of the Road: Report of the Socio-Economic Consequences of the Control of Horses Act on the Traveller Economy*. See Section 4.2.1 of Part II of this report for an in-depth discussion on the discriminatory effect of legislative developments on the Traveller economy.
 41. Equal Status Act, 2000, as amended by the Equality Act, 2004. Section 7(3) states that "an educational establishment does not discriminate under subsection (2) by reason only that – (c) where the establishment is a school providing primary or post-primary education and the objective of the school is to provide education which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school."
 42. See section 4.4.1 of this paper for an in-depth discussion on this matter. See also Educate Together (2005), *Shadow Report by Educate Together on the First Report to the United Nations Committee on the Convention on the Elimination of all Forms of Racial Discrimination by Ireland*
 43. Fanning, "Asylum Seeker and Migrant Children in Ireland: Racism, Institutional Neglect and Social Work", (2004), in Hayes and Humphries (eds) *Social Work, Immigration and Asylum: Debates, Dilemmas and Ethical Issues for Social Work and Social Care Practice* Jessica Kingsley Publishers: London, pp. 201-216, at p. 202.
 44. Mama, "Black Women and the British State", (1992), Braham, Rattansi and Skellington (eds.), *Racism and Antiracism: Inequalities, Opportunities and Policies* (1992), Sage Publications: London, pp. 70 – 101, at p. 86.
 45. Bridges, "Race, law and the State", (2001), in *Race and Class* 43, no. 2, pp. 61-76, at p.63 for a discussion of 'stop and search' policies in the United Kingdom.
 46. See Amnesty International (2001), *Racism and the Administration of Justice*
 47. See Irish Centre for Human Rights, 25.02.2003, "Judges' Apologies for Racist Comments not Satisfactory says Irish Centre for Human Rights". The fact that judges may have faced an internal disciplinary procedure, but no details of such a process, if indeed any did occur, were made public, is not satisfactory.

The independence of judges should not act as a cloak over their lack of public accountability for statements they might make in their courts, which are public institutions. There is a need for greater transparency within the judicial system in order to ensure the effectiveness of human rights and anti-racism training. While judges undergo a certain amount of awareness raising relating to racism, there is no information available in the public domain detailing the nature of this training, how widespread it is or follow-on evaluation on the impact of this training. See Section 2.2 of Part II of this report for details of these racist incidents.

48. Durban Declaration and Programme of Action, at para. 16.
49. General Recommendation number 30, "Discrimination against Non-Citizens", (2004), adopted by the Committee on the Elimination of Racial Discrimination during its 64th session
50. General Recommendation number 11, "Non-Citizens", (1993), adopted by the Committee on the Elimination of Racial Discrimination during its forty-second session. General Recommendation number 22, "Article 5 and refugees and displaced persons", (1996) adopted by the Committee on the Elimination of Racial Discrimination during its 49th session.
51. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Germany (1997), U.N Doc. CERD/C/304/add.24, at paras. 14-15 and Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Belgium (1997), U.N Doc. CERD/C/304/add.26, at paras. 11-13.
52. Examples of additional actions undertaken by international treaty bodies with a view to strengthening the effective enjoyment of human rights of non-citizens include: Comment number XV, "The Position of Aliens under the Covenant" (1986), adopted by the Human Rights Committee during its twenty-seventh session, pp. 140-142; and the frequent criticism of State Parties with regard to their treatment of non-citizens in the Committee on Economic, Social and Cultural Rights' examination of State Party Reports [See for example: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Belgium (1994), U.N Doc. E/C.12/1994/7 and Concluding Observations of the Committee on Economic, Social and Cultural Rights: Germany (1998), U.N Doc. E/C.12/1/Add.29].
53. General Recommendation number 30, "Discrimination against Non-Citizens", (2004), adopted by the Committee on the Elimination of Racial Discrimination during its 64th session, at para. 1.3
54. *Ibid.*, at para. 1.4; See also General Recommendation number 14, "Definition of Discrimination (Art. 1, par. 1)", (1993), adopted by the Committee on the Elimination of Racial Discrimination during its 49th session, at para. 2
55. See UDHR, at article 29.2, ICESCR, at article 4. The phrase "determined by law" is included in both articles.
56. See also note 53 above, at para. 1.4.
57. See Sieghart, *The International Law of Human Rights* (1983), Clarendon Press: Oxford, at p. 94-5.
58. General Comment number 15, "The Position of Aliens under the Covenant" (1986), adopted by the Human Rights Committee during its twenty-seventh session, at para. 2
59. *Gueye v. France* (1985), Human Rights Committee, no. 196/1985. See also Cholewinski "Economic and Social Rights of Refugees and Asylum Seekers in Europe", (2000), *Georgetown Immigration Law Journal*, vol. 14, pp. 709-756, at p.715.
60. Bayefsky, Helton, Henkin, Schacter, "Protecting the World's Exiles: The Human Rights of Non-Citizens", (2000), *Human Rights Quarterly*, 22.1, pp.280-297, at p. 285
61. See Sivanadan, note 20 above, at p. 3.
62. Whitney (1997), "Does the European Convention on Human Rights Protect Refugees from 'Safe' Countries?", *Georgia Journal of International and Comparative Law*, vol. 26, p. 375-407, at p. 389
63. Refugee Act 1996 (Safe Countries of Origin) Order 2003, S.I No. 422 of 2003.
64. *NGO Alliance Shadow Report In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* (2004), NGO Alliance.
65. RTÉ NEWS, 18.05.2005, "McDowell blasts 'bogus' asylum-seeking".
66. TV3 News, 16.01.2006.
67. Letter to the British Refugee Legal Centre of 8 July 1994, cited in Crawley, *Women as Asylum Seekers – A Legal Handbook*, p. 71, Immigration Law Practitioners' Association and Refugee Action, London, 1997.
68. General Comment No. 31 on the International Covenant on Civil and Political Rights, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", adopted on 29 March 2004 (2187th meeting), at para. 8
69. ICERD, at article 2.
70. See South African Human Rights Commission *Faultlines: Inquiry into Racism in the Media* (2000), see also

Calypso "The Media and Race Reporting", <http://homepage.tinet.ie/~calypso/racism/media.html>, consulted 23.03.2005

71. See for instance, *Report of the Legal Advisory Group on Defamation: Submission by the National Consultative Committee on Racism and Interculturalism* (NCCRI), January 2004.

72. Ibid.

73. *Justice Et Accountability: Stop Violence Against Women*(2005), Amnesty International (Irish section).

2. INSTITUTIONAL RACISM

The most well-known definition of institutional racism is the Macpherson definition, named after the judge, who presided over the Stephen Lawrence Inquiry, which found the metropolitan police of London to be institutionally racist.⁷⁴ While this definition is imperfect, its renown provides a useful springboard for a discussion on the manner in which institutional racism operates. The Stephen Lawrence Inquiry defined institutional racism defined as:

The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination, through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.⁷⁵

The problem with this definition arises from an over-emphasis on people's attitudes and behaviour, which only constitute one aspect of institutional racism, as has been shown above. The "structure, workings and culture of an organisation"⁷⁶ are equally important as they have the potential to reinforce or condition racist attitudes or behaviour, in addition to providing safeguards against personal racism.⁷⁷

While attitudinal aspects of institutional discrimination are overlaid within the Macpherson definition of institutional racism, racism at attitudinal levels offers sustenance to the structural barriers, which sustain institutional racism and may in certain instances explain the existence of barriers, which prevent people from minority ethnic groups being treated as well as people from the majority ethnic groups. As stated in this report's exploration of 'race' and racism, the influence of "ingrained cultural attitudes"⁷⁸ cannot be underestimated. They have the power to "take the form of natural features" which in turn influence "laws, institutions and policy practices".⁷⁹

In addition to 'race' theories, nationalist myths and ideologies may play a role in perpetuating institutional racism.⁸⁰ For example, a desire to maintain the particular values and traditions of a State may impede the values and customs of minority being adequately reflected in the structures and institutions of the State, in spite of their potential to enrich the State's existing identity and structures. Given the importance of attitudes and the covert nature of institutional racism, an assessment of whether institutional racism exists in a particular organisation must not be confined to an analysis of "formal policy and procedures",⁸¹ but must include an analysis of standard practice and the attitudes that support standard practice.

These "ingrained cultural attitudes" may lead to institutional racism through reliance on stereotypes and a failure to recognise the "special needs"⁸² of people from minority ethnic groups. A formal conception of equality, which entails treating everybody the same way may lead to a narrow conception of the needs of a particular service's user-group. This may also arise as a result of a perception of sole ownership by the majority ethnic group of their public services and an ensuing right to have their cultural identity alone reflected in the structure and



Imran Khan, the UK solicitor who acted for the Lawrence family in the Stephen Lawrence case, with Seán Love, Director of Amnesty International (Irish section), at a conference organised by Amnesty, the Irish Human Rights Commission and the National Consultative Committee on Racism and Interculturalism, on the theme of "Combating Racism and Promoting Equality through Legislation" in Trinity College Dublin in 2004

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“The concept of institutional racism describes how minorities suffer from discrimination when racism within society becomes reflected in organisations and institutions. The discriminations experienced by minorities may be unintentional but they are often profound. They emanate from the inability or unwillingness of organisations and institutions to take into account the diversity of society in providing services. They may be linked with a denial of the possibility of racism within unwarranted assumptions of social homogeneity. They may even be a product of narrow definitions of racism.”

Fanning,
Racism and Social Change in the Republic of Ireland, Manchester University Press (2002)

workings of the State's institutions. Regardless of the motivation behind the monocultural emphasis of institutions, under international law, notably article 2.2 of ICERD, States have an obligation to take "special and concrete measures" in order to remove "discriminatory barriers".⁸³

Racial stereotyping may also come about unintentionally as a result of a lack of awareness of the real needs of minority ethnic communities. However, the fact that such stereotyping "may be well-meaning", makes it "no less harmful".⁸⁴ The dangers of racial stereotyping are clearly evident where this practice results in people from minority ethnic groups being allocated a particular type of housing based on misassumptions of their needs,⁸⁵ being excluded from certain school subjects based on limited assessments of their future potential⁸⁶ and being left in situations where their human rights are being abused because of ill-informed ideas of what constitutes acceptable behaviour in minority ethnic communities.⁸⁷

Problems also arise as a result of Macpherson's concern not to apportion blame for the existence of institutional racism. However, as the Maastricht Guidelines created in 1997 by a group of experts on the implementation of socio-economic rights point out, failure to remedy de facto discrimination constitutes a violation of international human rights law.⁸⁸ State responsibility applies regardless of the level at which discrimination occurs and the motivation or indeed lack of motivation behind policies or practices which have discriminatory outcomes. As affirmed in the definition of racial discrimination contained in ICERD, it is by its outcome, rather than its intention that racial discrimination must be identified.⁸⁹

Furthermore, while outcomes are of the utmost importance in identifying institutional racism, a focus which is completely dependent on outcomes risks oversimplifying the phenomenon of institutional racism and offers another obstacle to its elimination. It is only by trying to understand how racism has come to be embedded in the "culture, structure and workings" of an institution that it may be really tackled. As the institutional racism is by its very nature deeply rooted, strategies aimed at its eradication must delve deeply.⁹⁰

2.1 Identifying Institutional Racism:

A focus on "racist outcomes" rather than intentions is nevertheless necessary because of the character of institutional racism.⁹¹ Certain practices may intentionally seek to discriminate against people from minority ethnic groups, while other policies or practices may "unintentionally disadvantage" people from minority ethnic communities.⁹² People from minority ethnic groups may be unintentionally discriminated against because they do not conform to the narrow criteria which institutions were designed to meet. Additionally, policies may particularly affect them because of precarious situations in which they tend to find themselves.

Where racism at the level of the state or its institutions is intentional, its covert nature may result in people from minority ethnic groups not being entirely sure that they were being discriminated against.⁹³ As Ginsberg asserts in his analysis of the reasons behind the allocation of inferior quality public housing to people from minority ethnic groups in the United Kingdom: "Such attitudes are rarely expressed publicly, they are more likely to exert their influence quietly and routinely".⁹⁴

The key to measuring institutional racism lies in the finding that a particular policy or practices

has a disproportionately negative impact or the potential for such an impact on people from minority ethnic groups.⁹⁵ Quantitative analysis should also include data on people from minority ethnic groups' perception of events, as the definition of a racist incident established during the Stephen Lawrence recognises: "any incident, which is perceived to be racist by the victim, or any other person."⁹⁶ In addition to the assessment of the impact of the distinction on people from minority ethnic groups, the reasonableness and objectivity of any distinction drawn between people from the majority and minority ethnic communities, as outlined in this report's discussion of permissible distinctions and restrictions of human rights between citizens and non-citizens, should also be measured.⁹⁷

Data and legal analysis are equally important indicators of institutional racism. While data which are disaggregated along ethnic lines has an important role to play in identifying racist outcomes and how these racist outcomes occur,⁹⁸ the obviousness of the impact of policies that are unintentionally discriminatory may vary,⁹⁹ which necessitates the use of the "reasonable and objective" criteria for the evaluation of policies and practices.¹⁰⁰ The use of these criteria may also result in the early identification of policies and practices, which have potentially racist outcomes.

Good practice as regards the establishment of indicators of discrimination at the level of the State and its institutions have been developed as part of the jurisprudence of the European Court of Justice (ECJ). In the case of the *Commission v. Belgium*,¹⁰¹ dismissing the Belgian State's call for statistical evidence to support the Commission's claim of indirect discrimination, the Court decided that whether a law was indirectly discriminatory did not depend on the number of people affected by such a law, but on the potential of such a law to have a disproportionate negative impact on people from a particular group.¹⁰² This ruling constitutes a very positive example, as it addresses inequality in terms of the power differential, which exists between different groups, rather than in terms of the numbers affected, a means of addressing minority rights issues which fail to grasp the problematic.¹⁰³

While the impact of institutional racism, whether intentional or unintentional, may have a profound effect on the individual, its existence may be seen through its impact on entire communities. The link between poverty and membership of a minority ethnic group has been shown in various jurisdictions from South Africa, Brazil, the United States and the United Kingdom.¹⁰⁴ Various studies carried out in these jurisdictions have shown that a disproportionate number of people from minority ethnic groups:

- Leave school earlier
- Die younger
- Work in lower paid jobs
- Live in substandard accommodation
- Are in prison
- Receive harsher sentences in criminal cases¹⁰⁵

Unfortunately, the over-representation of people from minority ethnic groups in these situations has served to reinforce racial stereotypes about inferiority and deviance.¹⁰⁶ Instead as serving as indicators of institutional racism, the over-representation of people from ethnic minority groups in the above-mentioned categories has led to people from ethnic minorities being stigmatised for the system's failure as inferior or "deviant."¹⁰⁷

However, the Committee on the Elimination of Racial Discrimination has identified the social exclusion of minority ethnic groups as a form of discrimination, namely segregation.¹⁰⁸ For

"In every part of the world, including Ireland...women are assigned to roles which are subservient to those of men. In challenging violence against women, the state needs to balance respecting diversity and difference, and affirming the universality and indivisibility of rights But the recent banning of headscarves in French schools was a step too far, and cannot be justified as a necessary or proportionate restriction of the right to freedom of conscience and religion."

Amnesty International
(Irish section)
*Justice & Accountability:
Stop Violence Against
Women* (2004)



Muslim women at a protest outside the French Embassy in Dublin, over France's plans to implement a ban on wearing the 'hijab' or veil in secondary schools or public offices, January 2004

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example, in the Case of *Koptova v. Slovakia*, an individual complaint heard by the Committee, it stated that the denial of access to places offered by public authorities to people from minority ethnic groups, constituted a violation of ICERD.¹⁰⁹ At the same time that the Committee recognises that a State's policies may not be directly responsible for segregation,¹¹⁰ it has pointed out that States have an obligation to eliminate segregation.¹¹¹

In addition to emphasising the recurrent relationship between poverty and discrimination,¹¹² the Committee has frequently expressed concern about the compliance of particular policies and practices with the Convention. It has paid particular attention to the segregation of people from minority ethnic groups as a result of housing and other patterns under Article 3.¹¹³ For example, recently it has called into question Ireland's treatment of asylum seekers during the asylum determination process.¹¹⁴

Footnotes

74. The Stephen Lawrence Inquiry consisted of an inquest into the death by of a black teenager, who was killed in a racist attack. The police's investigation into the teenagers murder was found to be marred by institutional racism. See *The Stephen Lawrence Inquiry Report* (1999)
75. *The Stephen Lawrence Inquiry Report* (1999), at para. 6.34.
76. Note 39 above, at p.17.
77. *Ibid*, at p.19.
78. Marc Verlot, "Understanding Institutional Racism" in The Evens Foundation (2001), *Europe's New Racism, Causes, Manifestations and Solutions*, Berhagn Books: Oxford, pp.27-42 at p.34
79. *Ibid*.
80. See Fanning, *Racism and Social Change in the Republic of Ireland* (2002), Manchester University Press, Manchester and New York, at p. 3 for a discussion on the relationship between nationalism and racism.
81. Braham and Skellington (eds.), *Racism and Antiracism: Inequalities, Opportunities and Policies*, (1992), Sage Publications: London, at p. 106
82. McGill and Oliver, *A Wake-Up Call on Race: Implications of the Macpherson Report for Institutional Racism in Northern Ireland*, (2002), Equality Commission for Northern Ireland, at p.31
83. Bas De Gay Fortman, "Racism and Poverty in a Human Rights Perspective" (2001), in The Evens Foundation (2001), *Europe's New Racism, Causes, Manifestations and Solutions* Berhagn Books: Oxford, pp.71-84, at p. 78
84. McGill and Oliver, note 82 above, at p.31.
85. Ginsburg, "Racism and Housing: Concepts and Reality", (1992) in Braham et al. (eds.) (1992), *Racism and Antiracism: Inequalities, Opportunities and Policies* pp. 109-132, at p. 118.
86. The Irish Traveller Movement (2005), *Shadow Report and Commentary on the First National Report by Ireland to the CERD Committee* at p.14. The ITM has criticised the "informal practice" of withdrawing Traveller children from Irish class for learning support classes. It emphasises the importance of Irish language competency as an essential requirement for accessing many further education and career options.
87. See for instance, *It's in our hands: Stop Violence Against Women* Amnesty International (2004).
88. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, *Human Rights Quarterly* 20.3 (1998), pp. 641-704, at p. 695, at para.11, were created in 1997 by a group of over 30 experts to elaborate on the Limburgh Principles on the Implementation of the International Covenant for Economic, Social, and Cultural Rights (1986).
89. See ICERD, at article 1.1. See Fanning, note 80 above, at p. 12: "The discriminations experienced by minorities may be unintentional but they are often profound". See Bourne, note 39 above, at p.17.
90. Verlot, note 78 above, at p. 28.
91. Anthias, and Lloyd, (eds.), *Rethinking Anti-Racisms: From Theory to Practice* (2002) Routledge: London, at p. 10.
92. Braham, Rattansi and Skellington (eds.), *Racism and Antiracism: Inequalities, Opportunities and Policies* (1992), Sage Publications: London, at p. 107.
93. *Ibid*, at p. 106.
94. Ginsburg, note 85 above, at p. 118.
95. Note 91 above.
96. *The Stephen Lawrence Inquiry Report* (1999), Ch. 47, para. 1.
97. See Section 3.1. See also Verlot, note 78 above, at p.28.
98. Note 91 above, at p. 106.
99. *Ibid*.
100. Note 78 above, at p.28.
101. *Commission v. Belgium*, Case C – 278/94 [1996] ECR I – 4307, See Bell (2002), *Anti-Discrimination Law and the European Union*, Oxford University Press: Oxford, at p. 34 for a discussion of this case.
102. The Court did not look to the numbers affected, but stated that "a provision of a national law must be regarded as indirectly discriminatory if it is *intrinsically liable* to affect migrant workers more than national workers and if there is a consequent risk that it will place the former at a particular disadvantage. It is not necessary to find that the provision in question does in practice affect a substantially higher proportion of migrant workers".
103. Consider Lentin, "Anti-racist responses to the racialisation of Irishness: Disavowed multiculturalism and its discontents", (2002) in Lentin, and McVeigh (eds.) (2002), *Racism and Anti-Racism in Ireland*, pp. 226-238, at p.228: "The multicultural approach is failing to intervene in the uneasy interface of minority and majority relations in Ireland. This problematic interface, which reduces the problems of unequal power

relationship to one of numbers, with the effect of naturalizing, rather than challenging the power differential"

104. Sivanadan, note 20 above, at p. 3; Huntley, and Wilmot, *Beyond Racism: Race and Inequality in Brazil, South Africa and the United States* (2001), Lynne Rienner Publications: Colorado.
105. Note 83 above, at p. 72. See Bas de Gay Fortman for more examples. "racialised inequalities"..
106. Valencia Rodriguez notes that socio-economic underdevelopment and segregation also contribute to racism. Reported in Virginia Dandan, Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, Geneva, 16-18 February 2000, at para.9, Fanning, note 80 above, at p. 181: Fanning notes that vicious cycle where racist outcomes reinforce racial stereotypes make it even more difficult for people from black and minority ethnic groups to overcome institutional racism.
107. Bustamante, Working Paper prepared by the Chairman/Rapporteur of the working group of intergovernmental experts on the human rights of migrants, (1998), U.N Doc.E/CN.4/AC.46/1998.5, at para. 38.
108. ICERD, at article 3. While article 3, which prohibits racial discrimination and apartheid, was originally drafted with South Africa in mind, the Committee has pointed out that it prohibits all forms of racial segregation.
109. Committee on the Elimination of Racial Discrimination, Communication No 13/1998 *Koptova v Slovakia* (01/11/2000), UN Doc CERD/C/57/D/13/1998 (Jurisprudence)
110. General Comment number 19, "Racial Segregation and Apartheid (article 3)," (1995), adopted by the Committee on the Elimination of Racial Discrimination during its 47th session, at para.2-3
111. *Ibid*, at para.4
112. Committee on the Elimination of Racial Discrimination's Response to the report "Draft Guidelines: a human rights approach to poverty reduction strategies", 11.03.2003 UN.CERD/C/62/Misc.22. See also *Combat Poverty/The Equality Authority* (2003), *Applying an Equality Dimension to Poverty-Proofing*(2003); In its *Submission to National Action Plan against Poverty and Social Exclusion*(2003), the NCCRI points out that there is increasing evidence that "poverty levels among minority ethnic groups are disproportionately high" (at p. 6). It also notes that there is a "causal link between racism and poverty (at p. 13)".
113. Banton, *International Action against Racial Discrimination*, (1996) Clarendon Press, Oxford, at p.200. See also Sweeney, *Anticipating CERD: 'Shadow' Reporting on Ireland's International Obligations to Combat Discrimination*, (2003), Thesis submitted for the LLM in International Human Rights Law (unpublished): Galway, at p.16.
114. Note 6 above, at para. 13: "The Committee is concerned at the possible implications of the policy of dispersal and direct provision for asylum seekers. The Committee encourages the State party to take all necessary steps with a view to avoiding negative consequences for individual asylum seekers, and to adopt measures promoting their full participation in society". It has also expressed concern about the social exclusion of the Roma in the Czech Republic in the areas of housing and education under article 3. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Czech Republic (2001), U.N Doc. CERD/C/304/Add.109 (2001), at para. 10: "With regard to article 3 of the Convention, concern is expressed about the existing situations of de facto segregation in the areas of housing and education of the Roma population. In particular, concern is expressed at measures taken by some local authorities leading to segregation and at the practice of school segregation by which many Roma children are placed in special schools, offering them lesser opportunities for further study or employment. The Committee recommends that the State party undertake effective measures to eradicate promptly practices of racial segregation, including the placement of a disproportionate number of Roma children in special schools".

3 TACKLING RACISM AT INSTITUTIONAL AND STATE LEVEL

In spite of the fact that there have been three UN Decades against racial discrimination, racism remains a widespread problem, complicated by the fact that the victims of racial discrimination are often blamed for the racist outcomes of State's policies and practices. Furthermore, institutional racism constitutes the most difficult form of racism to tackle, not least because of its covert nature and the unwillingness on the part of States to investigate the existence of hidden or unhidden barriers to equality.¹¹⁵

The first step to tackling racism at the level of the State and its institutions is to acknowledge its existence.¹¹⁶ Reliance on euphemisms such as 'interculturalism' and 'diversity' and consequently the elaboration of soft policy based on these principles are inadequate for tackling such a "deeply entrenched" phenomenon.¹¹⁷ The Macpherson report has set out a useful starting point: "There must be an unequivocal acceptance of institutional racism and its nature before it can be addressed".¹¹⁸

While no example exists of an institution or jurisdiction from which institutional racism has been completely eradicated,¹¹⁹ examples of good practices exist. Where strategies aimed at tackling racism at the level of the State and its institutions have been implemented, they have not always resulted in success. For example, there is some discussion in the United Kingdom at the moment that attempts to tackle racism within the police force may have actually contributed to the development of 'stealth racism'. In other words racism has managed to survive in the police force by going further underground.¹²⁰

This example is important as it clearly illustrates the resilience of racism. By highlighting the difficulty of tackling racism at the level of the State and its institutions, it also exposes the inadequacy of piecemeal policies and practices such as anti-racism training or recruitment as a means of tackling anti-racism.

Contrary to the current practice, where anti-racism and human rights are 'added-on' to the State's core policies and programmes, human rights and anti-racism must be central to State's policies and practices if racism at the level of the State and its institutions is to be tackled at all. Here follows some examples of good practices which constitute important elements of any strategy aimed at tackling racism at the level of the State and its institutions. The basis of these good practices in international law and work carried out by experts both within and outside of the United Nations framework is emphasised throughout this section.

3.1 A Cohesive Mainstream Strategy

As noted by McGill and Quintin, human rights and anti-racism must be incorporated into "the entire ethos of an organisation".¹²² The template for this is to be found in article 2 of ICERD, which expressly prohibits State or State sponsored racism.¹²³ The potential for racism within the structures of a society or an organisation is expressly recognised in ICERD, As with all human rights the prohibition against State and State-sponsored racism contained in ICERD obliges State Parties to respect, protect and fulfil the right in question.¹²⁴ This tripartite set of obligations reflects the range of actions which the State must undertake in order to ensure the effective enjoyment of the right to freedom from racial discrimination in minority ethnic groups' interaction with the State.

*The challenge of institutional racism is greater than that of a few 'bad apples'. Remedies must go far beyond recruitment, discipline and training to the entire ethos of the organisation, the services it offers and how these are received by black and minority ethnic groups, including Travellers.*¹²¹

McGill and Quintin
A Wake-Up Call on Race: Implications of the Macpherson Report for Institutional Racism in Northern Ireland
Equality Commission for Northern Ireland (2002)

3.1.1 The duty to respect

Under article 2, State Parties, which includes "public authorities" and "public institutions" at national or local level are directly prohibited from engaging in "any act or practice" which meet the criteria of racial discrimination set down in article 1 of ICERD,¹²⁵ against individuals, groups or institutions.¹²⁶ Additionally, State Parties must not "sponsor, defend or support" racial discrimination by third parties, be they individuals, groups or organisations.¹²⁷

3.1.2 The duty to protect

Article 2 obliges State Parties to review their existing policies, practices and structures, so as to eliminate racism at the level of the State and its institutions.¹²⁸ State Parties must also prohibit and eradicate racial discrimination by third parties through legislative and other measures.¹²⁹

3.1.3 The duty to fulfil

At the same time as actively encouraging anti-racist movements and organisations, States must actively "discourage anything which tends to strengthen racial division" or in other words lead to an increase in racism.¹³⁰ In practical terms, this translates as an obligation to ensure that the introduction of new legislation, policy or practice shall not lead to discrimination or an increase in racism.

3.1.4 Positive Measures

As mentioned in Part 1, Section 1.4, in order to ensure the effective enjoyment of the right in question for all, article 2.2 advocates that State Parties take affirmative action or positive measures in favour of disadvantaged groups. As with all strategies aimed at tackling racism adequate safeguards should be in place in order to ensure that it meets its intended aims and does not add to the problem, instead of the solution. In order to ensure that a policy of affirmative action does not lead to discrimination, such a policy should only be implemented after careful needs analysis. Furthermore, its effectiveness should be closely monitored. Special measures in favour of targeted groups should be reassessed and discontinued if necessary, in the case of the cessation of de facto discrimination or the proven ineffectiveness of particular special measures.

Care should be taken in order to ensure that affirmative action policies do not result in "tokenism", that is ensuring equality of opportunity for a few individuals, while doing nothing to address the relationship between the barriers to equality faced by disadvantaged groups.¹³¹ In addition to benefiting only people from privileged backgrounds within minority ethnic communities,¹³² a policy of affirmative action, which is not implemented effectively, risks undermining the achievements of people from minority ethnic communities. As Castellino has remarked, people from minority ethnic groups may feel that "their own achievements are belittled by the majority, who see them as beneficiaries of policy rather than being meritorious of the benefit accrued to them".¹³³

Given the misconceptions and ambiguity surrounding the principle of affirmative action, the execution of such an approach must be closely linked to human rights education.¹³⁴ Furthermore, policies such as affirmative action cannot be a substitute for policies aimed at combating social exclusion or other forms of racism, such as racist violence or hate speech as "they provide no benefits for groups such as Chinese or Jewish minorities, which suffer [these



United Nations flag. In 1966, the General Assembly of the United Nations declared March 21st as International Day for the Elimination of All Forms of Racial Discrimination

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other forms of] discrimination in many countries but are not, on average disadvantaged".¹³⁵

Policy interpretations of this legal obligation include equality mainstreaming,¹³⁶ which in turn includes equality-proofing and conducting an equality review. Equality mainstreaming implies incorporating an anti-racism element into all of an organisation's policies and practices. It includes initiatives such as equality-proofing, which entails taking the potential impact of a particular policy or practice on people from minority ethnic groups, as well as people from other groups, who are vulnerable to discrimination into account.¹³⁷ An equality review entails examining the existing structures, policies and practices of an organisation so that hidden or unhidden barriers to equality within the practice and structure of an organisation may be eliminated and overcome.¹³⁸

The CERD Committee's examination of State Party reports carries out a similar auditing function at international level.¹³⁹ Following on from the submission of a report from a State Party to the Convention and consultation with Non Governmental Organisations, who have prepared 'shadow' reports, there is an oral hearing, wherein the compliance of the State's legislation, policy and practice are examined. Based on all of this, the Committee issues "Concluding Observations and Recommendations" advocating measures the State should take in order to ensure the effective enjoyment of the rights set down in the Convention within its jurisdiction. While the Committee tends to refer to the substantive rights contained in the Convention, such as article 4 on 'Hate speech', the importance of article 2 should not be underestimated, as it sets down the nature of State's obligations under the Convention, in much the same way as corresponding articles in the ICESCR and the ICCPR, which have received a lot more attention.

The effectiveness of the above equality measures depends on the existence of safeguards which ensure that State Parties' obligations under international human rights law are given their due weight in the drafting and implementation of policies and practices. A number of challenges arise in the context of incorporating human rights and anti-racism into an organisation's overall approach. While an equality-based approach is useful particularly for dealing with cases where grounds on which discrimination occurs intersect, care must be taken to ensure that a hierarchy of grounds on which discrimination occurs does not develop. Unsatisfactory measures include the fact that only gender mainstreaming constitutes a key element of Ireland's National Development Plan.¹⁴⁰ The fact that a legal obligation to 'reasonably accommodate' difference only extends to the disability ground under Ireland's equality legislation is also problematic.¹⁴¹

There must be safeguards for ensuring that equality mainstreaming is not limited to the expression of good intentions, but sets down criteria which must be given their due weight in the implementation of an organisation's overall policy and practice. Examples of good practice include allocating responsibility for human rights and anti-racism to members of senior management, who would be accountable for the implementation and monitoring of these aspects of policy and practice.¹⁴²

This example of good practice offers a good response to one of the challenges associated with ensuring the effectiveness of a mainstreamed anti-racism and human rights strategy. While adequate attention must be given to human rights and anti-racism within an organisation, it must not be allowed to become a niche area rather than an intrinsic part of an organisation's overall policy and practice. Furthermore, the fact that anti-racism is to be mainstreamed within

"Racism has never been just about the actions of individuals. It finds expression in the rules of organisations, social norms and legislation."

Dr Bryan Fanning,
"Institutional racism and injustice",
Amnesty Magazine
(2005)



Racism and the administration of justice

AMNESTY INTERNATIONAL



Amnesty report published in 2001, Racism and the Administration of Justice, illustrating how racial discrimination in the administration of justice systematically denies certain people their human rights because of their colour, ethnicity, descent or national origin throughout the world. It shows that members of ethnic minorities often suffer torture, ill-treatment and harassment at the hands of the police, and face unfair trials and discriminatory sentencing which puts them at increased risk of harsh punishments, including the death penalty.

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an organisation's overall approach does not remove the need for affirmative flexible approaches which respond to the "special needs" of people from minority ethnic communities.¹⁴³

It has been found that the imposition of equality mainstreaming as a statutory duty, as has occurred in Northern Ireland under section 75 of the Northern Ireland Act 1998, has led to a marked improvement in the system, with equality mainstreaming being given a great deal more attention.¹⁴⁴ At the same time, it must be recognised that the imposition of equality mainstreaming as a legal obligation is not a magic solution and problems still persist. For example, legislation in Northern Ireland was still implemented in spite of the fact that it was found during the drafting process to have a disproportionately negative impact on the Traveller Community.¹⁴⁵ While research needs to be carried out in order to establish why these equality initiatives are not adhered to, it is probable that a lack of political will is responsible for their shortcomings. However, difficulties that arise as a result of other work pressures and what has been described as an "administrative burden" must also be acknowledged.¹⁴⁶

3.2 Evidence-Based Policy-Making

The collection and analysis of data that is disaggregated on the basis of ethnic origin, as well as other grounds on which discrimination occurs, constitutes a key tool for combating racial discrimination. This has been recognised at international level, and is evidenced by the insistence of the UN Committee on the Elimination of Racial Discrimination on the inclusion of information on "the demographic composition of the population" in State Parties' reports to the Committee.¹⁴⁷ The availability of such data may allow for the identification of problems which might otherwise pass unnoticed, particularly if data is collected and analysed without having been adequately disaggregated.¹⁴⁸ For example, in their study for Amnesty, *Racism in Ireland: The views of Black and Ethnic Minorities*, Loyal and Mulcahy found that while "overall levels of satisfaction" with the police force in Ireland were high, people from minority ethnic groups expressed a low level of confidence in the police force.¹⁴⁹

Governments are also obliged to ensure that the voices and viewpoints of minority ethnic groups can be clearly heard. In areas where routine data collection does not yield the required information, specific attitudinal research can serve to uncover useful information. A 1998 European Commission against Racism and Intolerance general policy recommendation recommends member states' governments to organise national surveys on the experience and perception of racism and discrimination from the point of view of potential victims.¹⁵⁰ Good population statistics, it says, include information about variables such as place of birth, ethnic origin, religious confession, mother tongue, citizenship, etc. If this sort of census data is not available, alternative means of identifying and reaching the pertinent respondents should be found. It notes that it should be borne in mind that some groups which might be particularly at risk as regards racism and discrimination – for example, undocumented migrants – may be very hard to reach. In addition to questions concerning socio-economic background and other factual details, areas it suggests for addressing in surveys include: concrete situations, such as contacts with various authorities (e.g. police, health care, social welfare, educational institutions); perceived opportunities to participate on an equal basis in society, awareness of specific measures put in place to improve the situation of minority groups, and extent to which such opportunities have been realized; perceptions and attitudes, such as trust in institutions, or attitudes towards immigration or minority policies. It points out that surveys mainly generate data on *subjective experiences* of discrimination, but suggests that reports of

subjectively experienced discrimination are valuable as an indicator, particularly if assessed against the background of other kinds of information, such as unemployment statistics, police records, complaints filed etc.

Not only is the availability of disaggregated data essential to the identification of institutional racism, but it allows for the formulation of evidence-based policy making, benchmarking and monitoring the disproportionate negative impact of the State's overall approach or particular policies and practices on people from ethnic minority groups. In fact, the importance of data collection is such that unwillingness to collect disaggregated data on the part of the State may indicate an unwillingness to tackle racism at institutional or State level or even acknowledge that such a problem exists. Of course, where data is collected and disaggregated on the basis of ethnicity, safeguards must be in place in order to ensure that the data is used for the purpose for which it was designed.¹⁵²

3.3 A Working definition

A widely-disseminated working definition of institutional racism is a pre-requisite to tackling racism within institutions. The existence of such a definition or guidelines is not sufficient, but must be accompanied by training in order to ensure that this definition and guidelines on its interpretation are incorporated into standard practice.¹⁵³ We propose the following as a working definition of institutional racism vis-à-vis international human rights law: "Laws, policies or practices of the State or institutions of the State, which have a disproportionate negative impact, or, in the absence of data to assess their impact, potential disproportionate negative impact, on persons from minority ethnic groups, or fail to provide equal benefit to persons from minority ethnic groups, whether resulting from an act or omission, where the State and its institutions are under an obligation arising from international human rights law."

3.4 A Code of Practice

Codes of Practice for institutions, such as the Equality Authority's 'Code on Practice on Sexual Harassment and Harassment at Work', constitute an example of good practice as they clearly set down the parameters of acceptable behaviour. Not only are they applicable to organisations as both employers as service providers, but they are user-friendly as actions undertaken to counter racism within institutions can easily be measured and evaluated using this model. However, as with definitions and guidelines, the introduction of a code of practice must be accompanied by training for staff and awareness-raising for the public. There must also be adequate safeguards in place to ensure that it is relied upon as part of standard practice.¹⁵⁴

3.5 Effective Sanctions and Remedies

The importance of effective sanctions in ensuring the effective enjoyment of the right to freedom from racial discrimination is recognised in ICERD. Article 6 underlines States' duties to provide effective "protection and remedies through the competent national tribunals and other State institutions" for victims of racial discrimination. Virginia Dandan of the UN Committee on Economic, Social and Cultural Rights (CESCR) has pointed out, while it is "relatively rare" for a State not to have laws in place which provide remedies for victims of racial discrimination, the problem lies in the effectiveness of these laws and remedies.¹⁵⁶

The effectiveness of human rights of a national level depends a great deal on the knowledge

"The aim of the type of survey outlined in this recommendation is to gain a picture of the problems of racism and intolerance from the point of view of actual and potential victims. This innovative approach involves conducting a survey among members of various groups vulnerable to acts of racism, xenophobia, antisemitism, and intolerance, with questions aiming to elicit information about their experiences of racism and discrimination and how they perceive various aspects of the society in which they live in this respect. The data collected thus concerns the perceptions and experiences of members of vulnerable groups."

ECRI general policy recommendation No. 4

“Institutional racism happens when the practices, policies and attitudes of institutions result in the systematic exclusion of some minority ethnic groups, again either consciously or unconsciously. It is a difficult type of racism to recognise and it can manifest itself in many areas of life including employment, education, accommodation and other opportunities to which the general public usually have access. Racism is often an institutional issue.”

Guidelines on Anti-Racism and Intercultural Training
NCCRI (2001)

of the State's authorities of the State's obligations under international law, as well as individual's knowledge of his or her human rights within a given jurisdiction. In recognition of the fact that the people most vulnerable to the abuse of their human rights in society are also those who have the most difficulty in accessing an effective remedy,¹⁵⁷ the UN Human Rights Committee (HRC), the monitoring body for the ICCPR has emphasised the importance of making individuals aware of their rights, in order to comply with the correlative article of article 6 of ICERD contained in the ICCPR. Furthermore, it emphasises the need for “all administrative and judicial authorities” to be made aware of the State's obligations under international human rights law and recommends that this be assured through the inclusion of human rights training in the overall training which State officials in this field receive.¹⁵⁸

The CERD Committee has also addressed the need for an awareness of the effect which racial discrimination has on victims of discrimination, which it believes is often underestimated, particularly in relation to “the injured party's perception of his or her own worth and reputation”.¹⁵⁹ In recognition of the damage caused by racial discrimination, article 6 provides for reparation for victims of racial discrimination.

While sanctions for the perpetrator of the discrimination are important as regards deterrence for the perpetrator and for their effect on societal attitudes to racial discrimination, this is not necessarily enough to ensure just satisfaction for the victim of racial discrimination. Clarifying the right to seek reparation contained in article 6 of the Convention, the Committee recommends that States “should consider awarding financial compensation for damage, material or moral, suffered by a victim whenever appropriate”.¹⁶⁰ Nonetheless, effective sanctions for perpetrators of racial discrimination are also necessary to comply with a State's duty to provide “effective protection” against racial discrimination under Article 6. Accountability for racial discrimination makes an important contribution to protection against this type of discrimination, as its criminalisation makes it unacceptable in the public consciousness.¹⁶¹

In the same way that accountability for human rights abuses contributes to their protection, a lack of effective legislation and the corresponding immunity, which this affords perpetrators of abuses, increases the vulnerability of targeted racialised minorities to the abuse of their human rights. In his report of the UN working group of intergovernmental experts on the human rights of migrants, Bustamante points out that a lack of accountability for racial discrimination may actually lead to a de facto decrease in the human rights protection of minority ethnic communities as those who discriminate against them know that they will not be held accountable. The State must have effective sanctions against hate crimes, including hate speech and breaches of equality law in order to ensure respect for the law. At the same time, in accordance with article 6 of ICERD, the victim's right to adequate redress must be given its due.¹⁶³

Even where the authorities are aware of the State's obligations under international law, individuals from vulnerable groups may encounter structural or attitudinal barriers when they seek redress in cases racial discrimination. For example, the Committee on the Elimination of Racial Discrimination has observed that women may have to surmount additional obstacles to men in order to obtain a remedy in cases of racial discrimination, as a result of gender-bias in the judicial system or “discrimination against women in the private spheres of life”.¹⁶⁴

As with the other examples of good practice discussed in this section, additional safeguards

such as human rights and anti-racism training must accompany such laws in order to ensure that they are implemented in accordance with the spirit with which they were drafted. At institutional level, racism within the workplace should not go unpunished. This approach should also include intolerance of discriminatory behaviour on the part of or towards clients.¹⁶⁵ For example, while judges in the United Kingdom can theoretically hand out harsher sentences in cases where racism is deemed to be an aggravating factor, they rarely do so in practice, and, in fact, the introduction of the concept of 'racially aggravated crime' has actually had a disproportionate negative impact on people from ethnic minorities. Indeed people from minority ethnic communities, rather than the majority community, are at the receiving end of these harsher sentences.¹⁶⁶

Furthermore, the legal system's traditional emphasis on the individual makes it difficult to achieve redress in cases where entire communities are discriminated against directly or indirectly as a result of hidden or unhidden barriers which prevent them from being treated equally to people from minority ethnic groups. In order to constitute effective remedies, judicial and other forms of redress must take into account the obstacles faced by victims of racial discrimination in accessing these redress mechanisms. In addition to taking these difficulties into account in the design and practice of these redress mechanisms, the legal framework in which these institutions operate should reflect the reality of the form and situation which discrimination takes in order to offer appropriate redress to victims of discrimination.

3.6 Human Rights Training

At the same time that effective remedies and sanctions constitute an essential component of any anti-racism framework, they do not provide sufficient protection against racism in themselves and need to be supported by measures which promote tolerance and respect for human rights, such as human rights education. The importance of the promotion of human rights, particularly anti-racism training, as a means of ensuring effective protection against racial discrimination, is recognised in article 7 of ICERD, which explicitly obliges States to: "adopt immediate and effective measures particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups".¹⁶⁷

In spite of the inclusion of an entire article in ICERD devoted to human rights education, its importance is often underestimated. However, its significance has been stressed by the CERD Committee in its General Recommendation number V, which underlines State Parties obligations to report on the measures it has undertaken in relation to its obligations under Article 7. The need for concrete and "effective measures" is clear from both the language of Article 7 and the dissatisfaction expressed by the Committee at the inclusion of "general and perfunctory" information on activities in relation to Article 7 by State Parties in their reports to the Committee.¹⁶⁸

Moreover, the importance of human rights education within the ICERD Convention becomes evident when the title of the Convention, which is aimed at the elimination of all forms of racial discrimination, is considered. Article 7 provides a legal basis for tackling the root causes of racial discrimination through education.¹⁶⁹ It is a key article, which guarantees the effectiveness of other human rights in the Convention.¹⁷⁰ The importance of human rights

"[T]he World Conference against Racism ... [u]rges States ... to ensure the right to equal treatment before the tribunals and all other organs administering justice. In this regard, the World Conference underlines the importance of fostering awareness and providing training to the various agents in the criminal justice system to ensure fair and impartial application of the law. In this respect, it recommends that anti-discrimination monitoring services be established"

Durban Declaration and Programme of Action, 2001

'You have to remember that in the institutions there are people and in the people there are attitudes and these attitudes are the processes of years and years of this'

Participant in Vision 21 consultation

education is such that it is often referred to in relation to other human rights, such as the right to equality before the law,¹⁷¹ the prevention of torture,¹⁷² the right to education and to health.¹⁷⁴ Furthermore, there is an increasing awareness of its potential role in ensuring effective human rights protection,¹⁷⁵ with emphasis being placed on both making officials aware of State Parties' legal obligations under international law¹⁷⁶ and deconstructing racist attitudes, which legitimise racism, whether it manifests itself in an overt or covert manner.¹⁷⁷

As has been recognised at an international level¹⁷⁸ and is evident from the relationship between the effectiveness of legislation and human rights education explored in human rights and anti-racism training is a pre-requisite for the functioning of initiatives aimed at addressing racism at the level of the State and its institutions. However, as with all of the above-discussed initiatives certain safeguards need to be in place in order to ensure the effectiveness of such training.

In addition to comprising part of a well-organised overall human rights and anti-racism programme, it should be firmly rooted in international human rights law and its underlying principles. As Lentin points out in her discussion of anti-racism in Britain, badly organised anti-racism training, which was rooted in "pseudo-psychological" methods had a negative impact on anti-racism.¹⁷⁹

Examples of good practice include the participation of people affected by racism in anti-racism training, such as the training of health-board officials in Ireland by members of the Traveller Community.¹⁸⁰ Further safeguards to ensuring the effectiveness of human rights and anti-racism training include making it compulsory or linking participation in such training to pay scales and advancement within an organisation.¹⁸¹ Additionally, the effectiveness of such training should not be assumed but follow-up and evaluation of the outcomes of such training should occur, as with all other human rights and anti-racism initiatives.

3.7 Targeted Recruitment

Targeted recruitment of people from ethnic minority groups can have a significant impact on racism at the level of the State and its institutions through the provision of positive role models from minority ethnic communities within the system. In addition to redressing the obstacles faced by people from minority ethnic communities, it is argued the benefits of affirmative action are not confined to the individuals, who benefit from it directly, but also extend to minority ethnic communities and society in general. It is contended that the representation of people from minority ethnic communities not only results in the delivery of an improved service to people from minority ethnic groups through "better understanding and knowledge of the problems affecting disadvantaged groups", but is necessary for society as a society as a whole, as decision-making and policy implementation should reflect the needs and values of the entire society and not just the dominant ethnic group.¹⁸²

However, like affirmative action the concept of targeted recruitment is often misunderstood. Contrary to hiring people on the basis of their ethnicity or skin colour, targeted recruitment may entail removing "hidden" or "unhidden" barriers to joining a particular organisation. For example, in the context of the Gardai's current recruitment drive, as has been acknowledged by the Minister for Justice, the Irish language requirement constitutes an obvious barrier to eligibility for the Gardai for many people from minority ethnic groups.¹⁸³ However, "hidden" barriers may also exist, which must be addressed in advance of any targeted recruitment drive. "Hidden barriers" may include the fact that a particular organisation would not be considered

an attractive or welcoming place to work for people from minority ethnic groups.

The recruitment process itself may constitute an additional barrier for people from minority ethnic groups. This may result from a number of factors, for instance the design of entry tests may be best suited to the dominant ethnic group's style of learning.¹⁸⁴ Prejudicial attitudes on the part of interviewers, including attitudes of which they may be unaware, may also constitute a hidden barrier. The experience of discrimination as a result of structural barriers or unchallenged racist attitudes during the educational system may also be responsible for people from minority ethnic communities not possessing qualifications which would make them eligible for many posts. In addition to showing the need to combine special measures such as targeted training programmes for people from minority groups,¹⁸⁵ this example shows the cumulative effect of barriers within the system on an individual's effective enjoyment of their human rights.

3.8 Evaluation

Human Rights law favours indicators as the best means of measuring progress. The UN Millennium Development Goals constitute a well-known example of the United Nations' determination to hold States accountable to the promises they have made with regard to human rights.¹⁸⁶ Without indicators, the State cannot claim any improvement in the rights of people or be held responsible for any losses or diminution of those rights. If the private sector can record indicators of its progress in certain areas of its operations, can the State not be expected to be able to do the same?¹⁸⁷

Footnotes

115. Note 85 above, at p. 111: "To confront institutional racism effectively is to take on an entrenched power structure, which has been legitimised by common-sense racism and sustained by structural processes".
116. Van Boven, "Discrimination and Human Rights Law: Combating Racism" in Sandra Fredman (ed.), (2001), pp.111-133, at p. 114
117. See Lentin, note 103 above, for a discussion on the shortcomings of an anti-racism strategy that concentrates on cultural difference, rather than the power differential between majority and minority ethnic groups.
- 118 Bourne, note 39 above, at p.7.
119. The Committee on the Elimination of all Forms of Racial Discrimination has also observed that no State in the world is immune to racism: "In the three decades of its existence, the Committee on the Elimination of Racial Discrimination, the monitoring body established under the Convention, had reached the conclusion that no State was immune to racially discriminatory practices, which often emerged as a reflection of traditions or age-old prejudices or as a result of the introduction of policies or ideologies based on chauvinistic nationalism". Luis Valencia Rodriguez, reported in Virginia Dandan, Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, Geneva, 16-18 February 2000, at para.9
120. Press Association, , "Report claims police 'stealth racism'", *The Guardian*, 14.06.2004.
121. Note ... above.
122. Ibid, at p.31
123. ICERD, at article 2.1: "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races".
124. Eide, "Economic, Social and Cultural Rights as Human Rights" (2001) in Eide, Krause and Rosas, *Economic, Social and Cultural Rights*, Martinus Nijhoff, The Hague, pp.9-28 at p. 23.
125. See section 2.1.
126. ICERD, at article 2.1 (a): "Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities

- and public institutions, national and local, shall act in conformity with this obligation".
127. ICERD, at article 2.1 (b): "Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations".
 128. ICERD, at article 2.1 (c): "Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists".
 129. ICERD, at article 2.1(d): (d) "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization".
 130. ICERD, at article 2.1 (e): "Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division".
 131. UN Commission on Human Rights, Final Report submitted by Mr Marc Bossuyt Special Rapporteur on affirmative action, "Prevention of Discrimination: The concept and practice of affirmative action" (17 June 2002), UN Doc E/CN.4/Sub2.2002/21.
 132. Ibid. UNESCO Declaration on Race and Racial Prejudice (1978).
 133. Castellino, "A Re-Examination of the International Convention for the Elimination of Racial Discrimination", at p.15.
 134. UN Commission on Human Rights, Final Report submitted by Mr Marc Bossuyt Special Rapporteur on affirmative action, "Prevention of Discrimination: The concept and practice of affirmative action" (17 June 2002), UN Doc E/CN.4/Sub2.2002/21, at para.33
 135. Ibid, at para.39
 136. See Equality Authority (2003), *Report on Conference – Mainstreaming Equality: Models for a Statutory Duty*, 27th February 2003.
 137. See Equality Authority (1996), *Equality Proofing Issues*.
 138. Niall Crowley, Chief Executive Officer, Equality Authority, "Mainstreaming Equality -Foundations in the Irish Context" (2003) in *Report on Conference – Mainstreaming Equality: Models for a Statutory Duty* 27th February 2003, pp.4-9, at p.7. The Equality Authority defines an Equality review as "a review process that explores policy, perceptions, practices and procedures for their impact on equality for employees across the nine grounds and for their contribution to a workplace culture of equality. A range of quantitative and qualitative methodologies are used included analysis of available data, surveys and focus groups. The findings of the review form the basis for an action plan to enhance equality in the workplace". This tool would also be suitable for ensuring non-discrimination in the provision of services to people from minority ethnic communities.
 139. See Castellino, " note 133 above, at p. 4 for a discussion of the role of Committee on the Elimination of Racial Discrimination's State reporting mechanism.
 140. See the NDP Gender Equality Unit of the Department of Justice, Equality and Law Reform, <http://www.ndpgenderequality.ie/>, consulted 26.04.2005, "Gender mainstreaming is a requirement for all policies and programmes funded under the Irish National Development Plan 2000 to 2006 (the NDP). The Unit advises and supports NDP policy makers and implementors in carrying out this work".
 141. Equal Status Act 2000 and 2004, number 8 of 2000 and number 24 of 2004, at section 4 (1), "For the purposes of this act, discrimination includes a refusal or failure to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service". Employment Equality Act, number 21 of 1998 and number 24 of 2004, at section 16(3)(b): "An employer shall do all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment of facilities to which paragraph (a) relates"
 142. See Equality Authority, *Code of Practice on Sexual Harassment and Harassment at Work* (2002), at p.14- 15.
 143. See the NCCRI on the need for an approach which is comprised of a Combination of mainstreamed and targeted approaches aimed at minority ethnic groups. NCCRI, Irish Health Services Management Institute, *Cultural Diversity in the Irish Health Sector, Towards the Development of Policy and Practical Guidelines for Organisations in the Health Sector*, (2001), at p.7, p.12.
 144. Niall Crowley, note 138 above, at p.8. Evelyn Collins, Chief Executive, Equality Commission for Northern Ireland, "Mainstreaming Equality – the Statutory Duties in Northern Ireland" (2003) in *Report on Conference – Mainstreaming Equality: Models for a Statutory Duty* 27th February 2003, pp. 13-19, at p.13
 145. Mc Veigh, "Racial Statelet? Racism in the six counties", Paper presented at Race and State Conference, Trinity College Dublin, 30.03.2005, The situation in Northern Ireland is not unique and the same problems

- have been found to occur in Norway with regard to gender mainstreaming, for example. See Mile, Gender Equality Ombud, Norway (2003) "Mainstreaming Equality - Models for a Statutory Duty" (2002), in *Report on Conference – Mainstreaming Equality: Models for a Statutory Duty* 27th February 2003, pp.10-12
146. See McGill and Oliver, note 82 above, at p. 16-17.
 147. In General Recommendation number 4, the Committee of the Elimination of Racial Discrimination "invites States parties to endeavour to include in their reports under article 9 relevant information on the demographic composition of the population referred to in the provisions of article 1 of the Convention". General Recommendation 4 (1973), "Demographic Composition of the Population", adopted by the Committee on the Elimination of All Forms of Racial Discrimination during its eighth session.
 148. This point was made in a paper delivered by Rebecca King - O'Riain at a recent conference on 'Race and State' held in Trinity College Dublin. Rebecca King - O'Riain, "Stating your race: Racial/ethnic categories in Ireland and the United Kingdom", Paper presented at *Race and State Conference*, Trinity College Dublin, 30.03.2005
 149. Note 1 above, at p.29-30.
 150. ECRI general policy recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, CRI (98) 30.
 151. King-O'Riain, "Stating your race: Racial/ethnic categories in Ireland and the United Kingdom", Paper presented at *Race and State Conference*, Trinity College Dublin, 30.03.2005.
 152. At a recent conference on 'Race and State' held in Trinity College Dublin, Alana Lentin expressed concern that data collected by States on minority ethnic communities has not been used for its stated purpose. 31.03.2005
 153. As we shall see when we look at the police force and the education system, definitions and guidelines exist in this area. However, the fact that these guidelines were introduced without training has resulted in them not being relied upon as part of institution's standard practice. See Sections 4.1.6 and 2.4 in Part II of this report.
 154. See Equality Authority, *Code of Practice on Sexual Harassment and Harassment at Work* (2002).
 155. ICERD, at article 6: "States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination".
 156. Dandan, Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, Geneva, 16-18 February 2000, at para. 17.
 157. Boven, cited in Dandan, *ibid*, at para.51.
 158. General Comment number 3, "Implementation at National Level" (Article 2), adopted by the Human Rights Committee during its thirtieth session (1981), CCPR 29/07/81, at para.2 Article 2.3 of the ICCPR reads: ICCPR, at article 2.3: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted".
 159. General Recommendation number 26, "Article 6 of the Convention" (2000), adopted by the Committee on the Elimination of Racial Discrimination during its 56th session, at para. 1.
 160. *Ibid*, at para. 2.
 161. See Akhavan, "Justice in the Hague, Peace in the Former Yugoslavia? A Commentary on the United Nations War Crimes Tribunal", (1998), *Human Rights Quarterly*, vol. 20, issue 4, pp. 737-816.
 162. Bustamante, Note 107 above, paras. 39-42.
 163. See Section 2.4.
 164. General Recommendation number 25, "Gender related dimensions of racial discrimination" (2000), adopted by the Committee on the Elimination of Racial Discrimination during its 56th session, at para. 2.
 165. Equality Authority, *Code of Practice on Sexual Harassment and Harassment at Work* (2002), at p.20. Appropriate sanctions for non-employees "could in particular circumstances include termination of contract, suspension of service, exclusion from premises etc. as appropriate". See p. 23 on the difficulty of securing the participation of no-employees in the process

166. See Bourne, *Counting the Cost: Racial Violence since Macpherson* (2001), Institute of Race Relations: London, particularly at p.15 for a discussion of the ill-fitting nature of crimes prosecuted as 'racially aggravated crimes', especially when viewed in conjunction with other crimes, which contained a clear racist element, which judges refused to consider in their hearing of the cases.
167. ICERD, at Article 7: "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention".
168. General Comment number V, "Reporting by States Parties" (article 7 of the Convention on the Elimination of all forms of Racial Discrimination) (1977), adopted by the Committee on the Elimination of Racial Discrimination during its fifteenth session
169. See Donnellan, "Article 7 of the Convention on the Elimination of all Forms of Racial Discrimination – Destroying the Root Causes of the Noxious Weed at the Chalkface" (2004), *Irish Law Times* 96.
170. Bengoa, Garvalov, Mehedi and Sadiq Ali, "Joint Working Paper on article 7 of the International Convention on the Elimination of all Forms of Racial Discrimination", (1998), U.N Doc. E/CN.4/Sub.2/1998/4, at para. 9.
171. "High Commissioner for Human Rights Addresses Committee on Racial Discrimination", 24.02.2005, United Nations Press Release.
172. The strategy for the elimination of torture involves training police to react in different way and fostering respect for others. See Steiner and Alston, *International Human Rights in Context: Law, Politics, Morals* (2000), Oxford University Press, Oxford, at p. 249.
173. Note 169 above, at paras.107-9.
174. Toebe, "The Right to Health", (2001), in A. Eide et al, *Economic, Social and Cultural Rights*, pp.169-190, at p. 175.
175. UN Decade for Human Rights Education 1995-2004, G.A res. 49/184. See Sections 4 and 5.
176. General Comment number 5, "Reporting by States Parties" (article 7 of the Convention on the Elimination of all forms of Racial Discrimination), adopted by the Committee on the Elimination of Racial Discrimination during its fifteenth session (1977), at para. 2.: Invites the attention of States parties to the fact that, in accordance with article 7 of the Convention, the information to which the preceding paragraph refers should include information on the "immediate and effective measures" which they have adopted, "in the fields of teaching, education, culture and information", with a view to: (a) "combating prejudices which lead to racial discrimination"; (b) "Promoting understanding, tolerance and friendship among nations and racial or ethnic groups"; (c) "Propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination" as well as the International Convention on the Elimination of All Forms of Racial Discrimination".
177. The covert nature of racism shall be analysed further on in this report. See sections 4 and 5
178. Dandan, note 156 above, at para. 23, "special training courses should be provided to judges and government officials" see section 2.5
179. Alana Lentini, *Racism and Anti-Racism in Europe* (2004), Pluto Press, London, at p. 144. See also Bourne, note 39 above, at p.11. Bourne gives the example of Anti Racism Awareness Classes which were "based on pseudotherapeutic techniques [which] played on white guilt and even introduced quasi-genetic reasoning to explain racism
180. NCCRI, Irish Health Services Management Institute (2001), *Cultural Diversity in the Irish Health Sector Towards the Development of Policy and Practical Guidelines for Organisations in the Health Sector* at p. 5
181. Jaichand, *Submission to Peer Review of the Practitioner's Guide for Access to Justice, Section on 'The Judiciary' for the United Nations Development Programme (UNDP) Asia – Pacific Rights and Justice Initiative* compiled by the American Bar Association (ABA)- United Nations Development Programme (UNDP) International Legal Resource Centre, November 2004.
182. See Bossuyt's paper for a discussion on the various justifications for affirmative action: UN Commission on Human Rights, Final Report submitted by Mr Marc Bossuyt Special Rapporteur on affirmative action, "Prevention of Discrimination: The concept and practice of affirmative action" (17 June 2002), UN Doc E/CN.4/Sub.2.2002/21, at Section V: "Affirmative action must not lead to discrimination". See also paras. 20, 23.
183. Address by the Minister for Justice, Equality and Law Reform at the Garda Graduation Ceremony in the Garda College, Templemore, 14.10.2005.
184. Note ... above, at p. 107; See also Jenkins, "Black Workers in the Labour Market" (1992).
185. UN Commission on Human Rights, Final Report submitted by Mr Marc Bossuyt Special Rapporteur on affirmative action, "Prevention of Discrimination: The concept and practice of affirmative action" (17 June 2002), UN Doc E/CN.4/Sub.2.2002/21, at para.33.
186. United Nations Millennium Declaration, Resolution adopted by the General Assembly, UN Doc. A/RES/55/2.
187. For a discussion on indicators in implementing human rights standards, see Tomasevski, "Indicators" (2001) in Eide, Asbjørn et al., *Economic, Social and Cultural Rights*, pp.390-401.

Part 2

IRELAND

1. BACKGROUND

Having examined the factors which contribute to the existence of racism at an the level of the state and its institutions from a general perspective, this report will now turn to an analysis of the Irish context with the aim of identifying certain factors which may foster racism at the level of the State and its institutions in Ireland.

1.1 Irish National Identity

The post-colonial development of Ireland as a State and the development of a fixed national identity which was firmly grounded in a strong association between Catholicism and Irishness, leaves the State particularly open to racism at the level of the State and its institutions.¹⁸⁸ The definition of Irish identity as inherently good in opposition to English identity, which became the carrier of corresponding negative non-Irish traits has the effect that is steeped in an inherently racist dichotomy. Moreover, the State inherited the structures of the imperial centre, allowing the same structures which sanctified colonialism to become firmly embedding in the new State.¹⁸⁹ Additionally, well-meaning but patronising development aid campaigns have contributed to the deep-seated attitudes of racial superiority in the psyche of the majority ethnic group.¹⁹⁰

1.2 The History of Racism in Ireland

Contrary to the myth that racism developed in Ireland in the early 90s in response to an increase in the number of asylum seekers and migrants coming to the State, Ireland's history offers many examples of racism, including racism at the level of the State and its institutions.¹⁹¹ The deep-rootedness of racism in Ireland is clear from the fact that the Irish Free State got its name from the Orange Free State in South Africa, the racist element of such a tribute being substantiated by the fact that many leaders of the Irish freedom movement called upon the British to grant the Irish people freedom on the basis of their whiteness.¹⁹² Anti-Travellerism has been a long-standing feature of the Irish State. The occurrence of pogroms in Limerick¹⁹³ and the implementation of overtly anti-Semitic immigration policies around the time of the Second World War are just two examples of manifestations of anti-Semitism in Ireland when a new Republic.¹⁹⁴ Ireland's historic lack of commitment towards refugee issues may be seen in its historic tendency towards resettling refugees in other jurisdictions, such as Canada.¹⁹⁵ The State's response to refugees in recent years has also been problematic – aside from the state's initial foot-dragging in establishing a refugee protection system, and its current general policy of deterring asylum seekers from arriving on Irish territory, it is generally accepted that the responsibility for integration of refugees in Ireland has fallen for the most part to the voluntary sector.¹⁹⁶ Its refusal to sign the UN Migrant Workers' Convention indicates a lack of commitment to address comprehensively the discrimination experienced by migrant workers in Ireland.

“The NGO Alliance is of the view that the Government’s First Report to the Committee was produced without sufficient consultation, and that little attempt was made by the Government to disseminate information on the Convention. It is further concerned that it was drawn up on the basis of an incomplete picture of Black and minority ethnic groups in Ireland, and the racism they suffer.”

*NGO Alliance Shadow Report
In Response to the Irish Government’s First National Report to CERD (2004)*

“The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention. ... the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group.”

CERD Committee’s concluding observations on Ireland’s first and second reports (2005)

1.3 The History of Minority Ethnic Groups in Ireland

In spite of the lack of space in post-colonial Ireland’s national identity for non-Catholic or non-White identities, Ireland’s population has always included people from minority ethnic groups, including religious minorities such as Jews and Protestants.¹⁹⁷ People from Ireland’s largest minority ethnic group, the Traveller Community, have long been discriminated against. In the past forty years or so Travellers have gone from having a distinct culture and way of life while still enjoying the same level of health to the majority ethnic group to seeing their life expectancy decrease dramatically and their way of life criminalized.¹⁹⁸

1.4 Travellers as a Minority Ethnic Group

Racism against the Traveller community at State level is clearly evident from the Government’s refusal to recognise Travellers’ distinct ethnicity,¹⁹⁹ especially in view of the fact that the UN CERD Committee has called upon the State to reconsider its position.²⁰⁰ When asked which policies or laws have had an impact on the Traveller community, Traveller participants in the Vision 21 consultation focused on the Government’s decision not to recognise Travellers as a distinct minority ethnic group. They reported a growing concern in their community that this formal non-recognition of minority ethnic status will have adverse effects on Travellers in the future.

Nomadism as a way of life, the family system within the Traveller Community, the importance of horses and the existence of the Traveller language, Gammon or Cant, constitute just some of the criteria which support the designation of the Traveller Community as an ethnic group.²⁰¹ Amnesty International is clear that the Traveller community meets internationally accepted definitions of a minority ethnic group protected under the UN CERD Convention. Travellers are expressly mentioned in the Declaration and Programme of Action agreed by the international community, including the Irish Government, at the 2001 WCAR.

The recognition of Irish Travellers as a distinct ethnic group in United Kingdom jurisprudence and equality legislation,²⁰² in addition to the longstanding association between the Traveller Community, the Roma and the Sinti, whose ethnicity is not disputed at international level, further support this categorisation.²⁰³ Moreover, the perception of Travellers as an ethnic group by representatives of the Traveller Community such as Pavee Point and the Irish Traveller Movement, meets the subjective requirement of self-identification in General Recommendation 8 of the CERD Committee.²⁰⁵

In spite of these arguments, the State is satisfied that while Travellers possess their own “culture”, they are not ethnically different from the rest of the population, as they are not of a different ‘race’,²⁰⁶ an attitude which is telling in terms of the misunderstanding of the concept of ethnicity at State level, as well as the continuing influence of theories on the biological difference of ‘races’.²⁰⁷ By arriving at this conclusion without any visible scientific basis, or any scientific justification, the state is merely dressing up its prejudice as fact. While the State claims that the recognition of Travellers as an ethnic group would have no repercussions on State policy and practice, it could have ramifications, not only in terms of the increased respect which it would show to the Traveller Community and its implications for policy and practice across the board, but also at State level, where the State would be obliged to reflect this ethnic diversity in its public representative system. Examples of good practice from other jurisdictions include the election of Roma representatives to parliament in Hungary.²⁰⁸ It is important to note that the Committee on the Elimination of Racial Discrimination has recommended that

the State take affirmative action programmes to improve the political representation of Travellers, particularly at the level of Dáil Eireann and Seanad Eireann.²⁰⁹

1.5 Participation of minority ethnic groups

None of the Vision 21 consultation participants had been consulted by a government official or member of a nongovernmental organisation for their views on any government policy, law or initiative. However, two participants were approached by local councillors around the time of the local elections. According to a 2000 report commissioned by the Equality Authority:

In order to ensure that equality data systems are established that meet the needs of the Equality Authority, reflect the concerns of affected social groups and contribute to the process of achieving greater equality in Irish society, a process of consultation is essential. Where structures and systems are being established for the collection, coordination and monitoring of equality data, effective consultation with and representation of affected groups and sectors need to systematically take place.²¹⁰

The majority of participants were keen to express their views in official consultation processes. Indeed, some of the participants had travelled for over an hour to attend the focus group meetings. However, some were hesitant when asked if they would participate further in the study in the future. Many felt that it may be drawing too much attention to make their voice heard about aspects of government policies. While this appears to contradict the willingness expressed to contribute it is apparent that participants do have barriers to overcome, such as fear of speaking out (especially among migrant participants) and language difficulties, in doing so.

Consultation with individuals can yield positive impressions of state institutions in addition to negative. For instance, when asked if they were comfortable when dealing with public bodies, many participants responded positively. While quite a number of migrant participants had some difficulties with at least one public body, even those participants were anxious to highlight the encouraging and helpful nature of some of their interactions.

Often, government consultation processes are directed at a limited audience, thus yielding limited information on needs and experiences. For instance, the 1997 Task Force Report on Violence Against Women, otherwise quite comprehensive, and the result of extensive consultation with stakeholder groups, includes no mention of the particular needs and experiences of minority ethnic women other than Travellers, and migrant, asylum seeking and refugee women in particular.²¹¹ Also, consultation processes are often announced through mainstream channels such as the larger national papers or government websites. Consultation is often by way of requesting written submissions, assuming a degree of literacy and/or proficiency in the English language not held by all. Where consultation invitations are issued through direct communications to organisations, this assumes that organisations to represent the views of all exist, and have the capacity and resources to engage in making submissions and attending consultation fora. For example, the Equality Authority is proactive in arranging regular consultation meetings with the community and voluntary sector, but some minority-led organisations do not have the personnel and resources to attend such meetings. What emerges from consultation can be of limited utility if not then disseminated in appropriate formats. For instance, the National Action Plan Against Racism, the result of years of consultation, was published only in the English language. If minority ethnic groups are to be true partners in developing, implementing and reviewing government policy, they need to be

“The Government should set up a mechanism for regular consultation with members of Black and minority ethnic groups, and with the NGO sector.”

*NGO Alliance Shadow Report
In Response to the Irish Government’s First National Report to CERD (2004)*

“Robust and accountable structures of representation and engagement - across both general policy as well as specialized initiatives such as citizenship and social capital, race equality, integration and immigration - constitute the bedrock of the achievement and maintenance of immigrant/minority ethnic community participation in civil society.”

*Diversity, Civil Society and Social Change in Ireland:
A North-South
Comparison of the Role of Immigrant/’New’
Minority Ethnic-Led
Organisations.
Dublin: Migration & Citizenship Research Initiative, UCD (2005).*

engaged with in a meaningful manner; and should be involved in the design and delivery not just of anti-racism and other measures specific to minority ethnic groups, but wider government policy. Furthermore, where the capacity of representative groups is limited or non-existent, government should build their capacity to be in a position to engage with its consultation efforts. Government should also ensure that minority ethnic groups are represented in decision-making and implementation bodies. In addition, it should take positive measures to recruit and retain members of minority ethnic communities within all its institutions.

- Recommendation: Government should mainstream consultation with minority ethnic groups across all government policy areas, and make sufficient efforts to identify, include and support all minority ethnic groups for this purpose. It should also ensure that minority ethnic groups are represented in decision-making and implementation bodies.

1.6 Minority-led NGOs

There is a growing recognition in Ireland that minority-led organisations must be fostered and supported so that they can represent their own interests in government processes, and engage in political dialogue on their own account. The different experiences and barriers confronted by diverse groups, e.g. the experiences and barriers encountered by indigenous minorities - Travellers, Black Irish, Irish Jews, Irish Muslims, etc - are necessarily quite different from those of “new”/immigrant minority communities, since the latter may be faced with the additional obstacles of language, lack of familiarity with norms, rules, protocols of Irish societal and government processes, in addition to language difficulties. Representatives of immigrant or “new” minority-led NGOs interviewed for the purpose of a recent report by the Migration & Citizenship Research Initiative, UCD, felt that, while insecure funding was a concern, government funding can compromise autonomy and strength of civil society organisations as a whole, and immigrant or “new” minority-led NGOs in particular.²¹² Government should seek innovative ways of supporting, and resourcing minority-led organizations rather than directly through its departments and agencies with whom these organizations must also deal on an equal footing, and sometimes in an adversarial fashion, in their role as participants in government consultation processes and as political advocates. If, as recommended, a separate government department were established with responsibility for the equality mandate currently held by the Department of Justice, Equality and Law Reform (see section.. below), funding secured through that department might not pose such a dilemma.

- Recommendation: Government should support and seek innovative ways of resourcing minority-led organizations

1.7 Views of Vision 21 consultation participants

While the views of participants in the Vision 21 consultation are spread throughout this report, their general overarching comments are contained in this section.

1.7.1 Traveller participants in Vision 21 consultation

Discussions around experiences of various services and supports by participants in the Traveller focus group focussed initially on their dealings with the Gardaí, where it was felt that in incidents involving a settled person and a Traveller, the Gardaí seem to operate under the presumption that the Traveller is at fault. Traveller participants felt that, rather than addressing

The role of civil society

NGOs in Ireland have played a key role in identifying and challenging overt or latent racism by the state and its institutions, and placing this on the political agenda. The NGO Alliance Shadow Report submitted to the CERD Committee to inform its review of Ireland's compliance with ICERD in 2005 was contributed to by over 30 NGOs, and signed up to by 44. It ensured that the Committee was made aware of the reality of racism on the ground and gaps in statutory responses, and the Committee's Concluding Observations and Recommendations on Ireland's compliance with ICERD reflected many of the recommendations laid out in the Shadow Report. The Alliance was represented at the Committee's hearing of the Government's Report in Geneva in 2005. At Geneva, CERD members described the NGO Alliance as a good model for NGOs' engagement with government and UN bodies, and welcomed its contribution. The Alliance continues to raise political and public awareness of ICERD and the CERD Committee's findings and recommendations.

It is worth noting that supporting the role of NGOs is a government obligation. Article 1(e) of ICERD provides: "Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements...." The CERD Committee "noting the existence, in the area of the application of the Convention, of a diversified NGO community in Ireland", recommended that the Irish Government "support the NGO community".

any specific need, efforts should be undertaken to improve the image and relationship that exists between Travellers and public bodies. Compulsory anti-racism training was a popular suggestion and one, they said, the Traveller community across the country would approve of. It was further suggested that, as part of this training, public bodies could attempt to provide services that are compatible with the Traveller way of life, such as access to GPs in other areas. It was believed that the production of manuals on how to run Traveller-friendly services would also help to educate the staff providing the services and supports.

The Traveller group suggest that government, in pursuing long-term anti-racism strategies in service provision, should move away from the idea that Travellers should be isolated. It was felt by many that, in schools and in the healthcare sector, Travellers are segregated from the rest of society, not for their own good, but in order to isolate them. Accommodation was raised as a key issue, as many were currently looking for accommodation across the country. Regrettably, it was felt that local authorities seem to either ignore the problem or attempt to provide 'standard accommodation', which participants thought culturally inappropriate in many cases. One participant maintained that when a Traveller family is going to move into an area, a letter is often distributed to residents stating that Travellers are to become residents by local authorities or residents committees. The consequence can be strong opposition by residents to the Traveller family, so that the family feels isolated from the community when they move in. Many in the Traveller group had extensive contact with the social welfare services, education and healthcare providers. Some of these services make participants feel uncomfortable, as they require much form-filling when registering. Many Travellers have literacy difficulties and can feel intimidated by formal situations. Difficulties are also caused when members of the community are travelling from one place to another and the system assumes that patients are settled and literate.

All but one Traveller participant at the time of the focus group was living in group housing (a

"We hope that working in meaningful partnership with organisations on the ground will be a key Government strategy, and in this regard, the importance of resourcing Minority Ethnic-Led Organisations and Anti-Racism work in the NGO Sector cannot be ignored."

NGO Alliance welcomes agenda for action on racism provided by the UN
NGO Alliance press release on publication of Concluding Observations of the CERD Committee on Ireland
14 March 2004



Martin Collins and Ronnie Fay from Pavee Point, and Phil Mullen and David Joyce from the Irish Traveller Movement, at the UN CERD Committee review of Ireland's First Report to the Committee in Geneva, March 2005

© Pavee Point

“We’ve been on the edge of society for over a thousand years. When will they learn to accept us?”

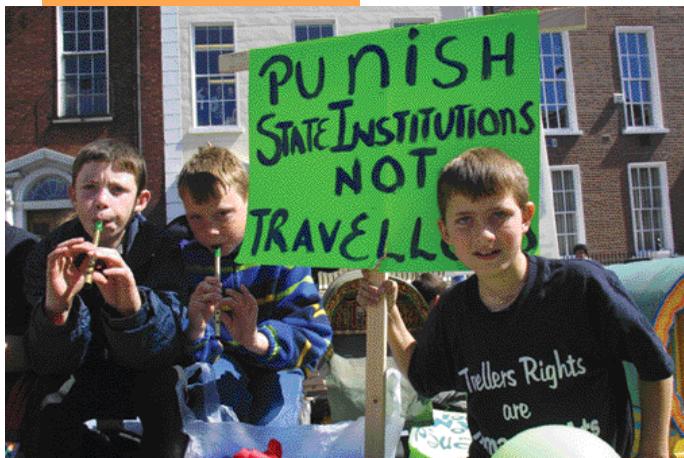
Traveller participant in Vision 21 consultation

small development or scheme of houses constructed specifically for Travellers) or on an official halting site. Generally a group of families would be identified prior to construction. The group could be related families or alternatively a group of families that had been living proximate to each other previously. The condition of the accommodation was stated as “appalling” and complaints to the housing authority, it was expressed, have no impact, one participant remarked: “They think that if you’re a Traveller, you’ll settle for anything”. This particular participant had suffered from problems with her plumbing, roof, drainage and windows in the first nine months of living in her house and stated that it took the threat of a solicitor’s letter to make the housing authorities respond to the problems. Also discussed was the fact that the City Council has not provided new halting sites in many years and bays in every site that are supposed to host one family are hosting two or three. When accommodation cannot be found in halting sites or group housing, Travellers are often placed in standard accommodation that isolates them from other Travellers. The group stated that the council does not provide support for these individuals’ issues or problems are ignored.

1.7.2 Integration and acceptance

For many participants, including Travellers, a great deal of importance was placed on feeling accepted in Irish society. There was a strong perception of difference for many participants as

they felt it was made very clear by some Irish people that they would never be truly part of society. When groups were asked if they felt part of Irish society, for many migrant participants, this was dependent on whether or not they had the right to work. For those not permitted to work, this was perceived as a distinct barrier to their integration. Some migrant participants who had lived in Ireland for a number of years, felt that they were part of their community, particularly where they lived. Migrant participants believed that integration meant intermingling with people in a very ordinary way and being included in everyday activities such as sports and training and education. While many felt that this was a key aspect to belonging, there was a strong sense of needing to belong to their own community too, and hold on to cultural traditions.



Protesters marching to the Department of the Environment on Custom House Quay Dublin in 2002 over trespass laws which criminalised Travellers camped on public land who have nowhere else to go

© Gareth Chaney/Photocall Ireland

When the Traveller focus group was asked for their views on the level to which they felt Travellers are integrated into society, all participants felt they are not. One participant said: “No matter how nice they (settled people) are to your face, at the end of the day, you’re just a knacker to them... you’re only a Traveller to them... and that’s all you are to them, just a Traveller.” Participants felt that their ‘Irishness’ and their Traveller identity are not mutually exclusive and both are a part of who they are. Participants stated that it is difficult to integrate into Irish society given the level of animosity directed towards them by members of the public, and that government activities seem to be directed towards excluding, rather than including them. A frequently stated example of the latter was the government’s decision to deny Travellers’ minority ethnic status. One participant pointed out the contradiction between public perceptions of Travellers as different, and their official nonrecognition as a distinct ethnic group: “People in Irish society class you as a Traveller, and everywhere you go people see you are seen as a Traveller, but the government won’t recognise you as a Traveller (i.e. a minority ethnic group).” When accessing public services, members of the Traveller community became keenly aware of their identity. One participant remarked: “If you walk into another Travellers trailer or another Travellers house, you don’t think (about the fact that) you’re a Traveller... but

if you go into a pub... a health clinic...a hospital... anywhere... you think, 'will they treat me different because I'm a Traveller.'

1.7.3 Root causes of indirect and unintentional institutional racism

The general feeling from Traveller participants was that public bodies are founded on policies and plans that are in opposition to the Traveller way of life by ignoring their nomadic culture. These policies attempt to isolate, not include, Travellers in society. Moreover, it was expressed that staff employed in many agencies do not have anti-racism training and can act in an inappropriate manner without realising. The group believed that levels of awareness among settled people of the Traveller culture were low, not just for Travellers but for ethnic minorities in general. Though awareness of how policies and laws specifically work against the Traveller community was low, the consensus was that almost all aspects of Irish public life are geared only towards settled people.

It emerged from interviews that there is a very narrow sense among the general population of what it is to be Irish. Irishness and nationality is something that is supported and validated by the state in terms of institutional policies and investment. There has been little or no investment in nurturing the Traveller identity rather the view is that policies have worked towards assimilation of Travellers into mainstream Irish society. In a number of focus group discussions, including the Traveller group, the point was made that minority ethnic communities are not represented in government department or agencies. As decision makers, policy makers and those implementing the policies at the front line are predominantly Irish citizens from the settled community then the system will be designed and run primarily according to a value system and culture that does not reflect that of minority ethnic communities. As a result, members of minority ethnic communities do not get maximum benefit from services.



"[T]he World Conference against Racism ... [u]rges States to work to ensure that their political and legal systems reflect the multicultural diversity within their societies and, where necessary, to improve democratic institutions so that they are more fully participatory and avoid marginalization, exclusion and discrimination against specific sectors of society"
Durban Declaration and Programme of Action

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Footnotes

188. See Fanning on the relationship between the myth of a homogenous national identity and the problem of racism in Ireland today. Fanning (2002), note 80 above at p. 3.
189. Lentin and McVeigh (eds.) (2002), *Racism and Anti-Racism in Ireland*, Beyond the Pale: Belfast, at p.18: "Ireland experienced and learned from British racism in the high colonial period."
190. Fanning, note 80 above, at p.9-14, argues that the manifestation of racism in Ireland is not merely founded upon xenophobia or "fear of the stranger", but upon "common assumptions about racial distinctiveness". See also Lentin and McVeigh, note 189 above, at p.21.
191. Tannam, "Questioning Irish Anti-Racism" (2002), in Lentin and McVeigh, note 189 above, at p. 204. Tannam points out that the timing of the ratification of the Convention is also indicative of the government's attitude to the origins of racism, linking it to the presence of increased numbers of persons from minority ethnic groups, rather than an issue which is more deeply rooted in Irish society: "It indicates an analysis of racism that operates from the numbers mindset and the linking of racism to the presence of members from minority ethnic groups rather than locating it and challenging it within the majority society itself". For this reason, it is of the utmost importance that we look at the history of racism in Irish society.
192. MacÉinri, "A Paradoxical Legacy of Empire", Paper presented at 'Race and State' Conference, Trinity College Dublin, 30.03.2005.
193. See Fanning , note 80 above, on the Pogroms in Limerick, at p. 42-2.
194. Lentin, "'Who ever heard of an Irish Jew'? The intersection of 'Irishness' and 'Jewishness'" (2002) in Lentin and McVeigh, note 189 above, at pp. 160-3. See also Fanning Fanning , note 80 above, at p.54.

195. Fanning, note 80 above, at p.93; see also Lentin, note 194 above, at p. 163.
196. See O'Mahony, "Supporting Asylum Seekers" (2003) in Fraser and Harvey (eds.), *Sanctuary in Ireland: perspectives on asylum law and policy*, Dublin Institute of Public Administration Dublin, pp.127-145, at p. 144; see also Fanning, note 80 above, at p. 95.
197. See NCCRI (2002), *Towards a National Action Plan against Racism: A Discussion Document to inform the Consultation Process*, for a discussion of the historical presence of minority ethnic communities in Ireland, at p. 8. It is important to acknowledge the existence of both positive and negative elements in Ireland's historical approach to minority ethnic communities. At the same time that the State has been praised for being the "first anywhere in the world to recognize specifically the place of the Jewish community", it is criticized as being "the embodiment of sectarian and patriarchal reaction". See McVeigh, "Is there an Irish anti-racism? Building an anti-racist Ireland" (2002), note 189 above, at p.213.
198. Fanning, note 80 above, at p. 5: "It would be difficult to exaggerate the extent of racism and discrimination against the Traveller people in Irish society and the extent to which it remains justified within racialised discourses that construct the Traveller people as deviant and inferior". See also European Commission against Racism and Intolerance (ECRI) (2002), *Second Report on Ireland* adopted 22 June 2001, CRI(2002)3, at para. 64.
199. Fanning, note 80 above, at p. 54: "Their very existence was denied"
200. Note 6 above, at para. 20: "Welcoming the open position of the State party in this respect, the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group".
201. For a discussion of Traveller ethnicity, see NCCRI (2004), *The Importance of Recognising Travellers as an Ethnic Group*, Submission to the Joint Oireachtas Committee on Human Rights; Keane, "International Law and the Ethnicity of Irish Travellers" (2005), *Washington and Lee 'Race' and Ethnic Ancestry Law Journal* Publication forthcoming, (Winter 2005), vol. 2.1; Pavee Point, Nomads of Ireland, www.paveepoint.ie/nomadsof.html, on-line version consulted 28.01.2005; Irish Human Rights Commission (2004), *Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination: A Discussion Paper*.
202. *O'Leary & Others v. Allied Domecq & Others*, unreported, 29 August 2000. See Keane, *ibid*, at p. 9; Irish Human Rights Commission (*ibid*, at p. 7-8 for a discussion of this case.
203. See for example Durban Declaration and Programme of Action, at part I, para. 68.
204. See Pavee Point Travellers Centre (2005), *Shadow Report: Ireland's First and Second Report on CERD* at p.10-12 and p.40 and The Irish Traveller Movement (2005), *Shadow Report and Commentary on the First National Report by Ireland to the CERD Committee* at part I, p.3-7
205. See Section 1.3
206. Interview with DJELR, 18.04.2005; See also Carl O'Brien, "Official Stance on Traveller Ethnicity defended to the U.N", 04.03.2005, *Irish Times*
207. See Section 4 of Part I of this report
208. See Concluding Observations of the Human Rights Committee, Hungary, U.N Doc. CCPR/CO/74/HUN (2002), at para. 3, 7. While the Committee has commended Hungary on its framework for "minority electoral representation", it notes that problems persist in relation to the effective enjoyment of human rights for people from the Roma community. For a discussion of the impact of the 1993 Minorities Act on the Roma in Hungary, see Claude Cahn, "Smoke and Mirrors, Roma and Minority Policy in Hungary" (2002) ERRC, <http://www.errc.org/cikk.php?cikk=1255&tarchiv=1>, consulted 03.05.2005.
209. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N Doc. CERD/C/IRL/CO/2, at para. 24. For more on the proposed Immigration and Residency Bill, see section 4.1.2.2(A)(ii) below
210. Barry (2000), *Building the Picture*, Equality Authority.
211. This is understandable to a degree since its emerged at a time of limited immigration and when the asylum system was in its infancy.
212. Feldman, Ndakengerwa, Nolan and Frese (2005), *Diversity, Civil Society and Social Change in Ireland: A North-South Comparison of the Role of Immigrant/'New' Minority Ethnic-Led Organisations* Dublin: Migration & Citizenship Research Initiative, Geary Institute, UCDC.

2 HUMAN RIGHTS AND ANTI-DISCRIMINATION UNDER IRISH LAW

2.1.1 The Constitution

Safeguards against discrimination are found in “fundamental rights” contained in Bunreacht na hÉireann, the 1937 Irish Constitution. In addition to specific provisions in Articles 40 to 44 such as those which guarantee the rights of the family,²¹³ the Irish Constitution contains unspecified ‘unenumerated’ personal rights.²¹⁴ The right to “equality before the law” is recognised by Article 40.1, under which the courts can strike down legislation and administrative decisions that conflict with this principle. However, the Supreme Court has adopted a “cautious and formalist approach in interpreting and applying”²¹⁵ Article 40.1. Notwithstanding that citizens are named explicitly as beneficiaries of these rights under the Constitution, there is a consensus among legal scholars in Ireland that the rights enshrined in the Irish Constitution are generally applicable to everyone within the State’s jurisdiction.²¹⁶ The state’s official position has confirmed this interpretation of Article 40.1 – in its submission to the UN Special Rapporteur on the rights of non-citizens, the government maintains that equality before the law is not confined to citizens.²¹⁷

However, non-citizens’ equal rights are not guaranteed in practice, as is evident from case law in this area.²¹⁸ In spite of positive findings regarding non-citizens in cases concerning “the administration of justice”,²¹⁹ the case of the *State (Nichalou) v. An Bord Uchtála*²²⁰ which remains “the most comprehensive analysis” of non-citizens’ rights in Ireland casts a doubt over the ability of non-citizens to effectively invoke the fundamental rights in the Constitution in a court of law.²²¹ In that case, which concerned the rights of a father to a child born outside marriage to be informed in the case of adoption, the Court determined that non-citizens could not invoke article 40.1 on equality before the law in the same way as citizens.²²² This ambiguity surrounding non-citizens rights under Irish law may present a situation where judges permit their personal prejudices to interfere with their impartiality in their dealings with people from minority ethnic groups. A number of high-profile racist remarks made by judges against non-citizens in Ireland in recent years highlight the need for the clarification of non-citizens’ rights under Irish law in order to ensure their effective enjoyment of human rights.²²³

Ireland has not incorporated the International Covenant on Economic, Social and Cultural Rights into domestic law. The limited number of socio-economic rights in the Constitution are included in the Constitution as Directive Principles,²²⁴ rather than in the section on fundamental rights. This raises questions as to whether they represent human rights or Irish citizens’ rights. While the Directive Principles contain a reference to citizenship,²²⁵ the fact that they are explicitly non-justiciable, constitutes the real impediment to their effectiveness.²²⁶ Nonetheless, the Directive Principles are helpful with regard to determining non-citizens rights, as they were included in the Constitution with the aim of acting as a “constant reminder” to the government of the type of society which the drafters of the Constitution hoped to create: “a social order informed by justice and charity”.²²⁷

2.1.2 The Citizenship Referendum

The lack of clarity surrounding the entitlements of non-citizens is of further concern given Ireland’s recent Constitutional referendum that removed the Constitutional entitlement to citizenship to anyone born on the island of Ireland, which contrary to misinformation circulated at the time of the referendum did not arise as a result of an anomaly in the Belfast

“I feel very different, especially at the parent / teacher meetings”

“I don’t feel part of Irish society yet. Not until I am working”

“Irish people should be ready to accept you if they know you are ready to work and pay tax”

“Integration is years away. It will only happen when my son marries your daughter” [referring to focus group facilitator]

“Irish people are not used to foreigners”

Migrant participants in Vision 21 consultation

Agreement, but had been guaranteed in Ireland since the entry into force of the 1956 Citizenship and Nationality Act.²²⁸

Additional concerns with regard to racism at the level of the State arise as a result of the lack of debate surrounding the referendum, in addition to the lack of attention paid by the State to the views of the Irish Human Rights Commission, which expressed concern at the time of the referendum that the Constitutional amendment would result in a certain form of racism being institutionalised.²²⁹ The main economic reason for supporting the citizenship referendum was the alleged strain on resources caused by non-citizens or "citizenship tourists", as the Minister for Justice described those giving birth in Ireland. The Masters of Dublin's maternity hospitals distanced themselves from claims made by the Minister and attributed to them in advance of the referendum that the health service was being placed under strain as a result of non-Irish women coming to Ireland to give birth in order to remain in the State, but these claims persisted in the public imagination, particularly due to the lack of data available to dispute this claim.²³⁰ Data refuting the Minister's claim was only released on the day after the referendum, a seven-week delay from the time that Deputy Pat Rabbitte requested this information.²³¹ In spite of the lack of indicators or substantial data made available to support the Minister's claims about 'citizenship tourists', the Department of Justice, Equality and Law Reform (DJELR) is satisfied that there was adequate debate surrounding the citizenship referendum and does not accept that there was any link with the rise in racist incidents recorded by the NCCRI²³² around the time of the citizenship referendum.²³³

2.2 Anti-discrimination Legislation



*Asha Heibe (4) with
Citizenship Referendum 'Vote
No' Campaigners outside the
Dáil in June 2004*

© Leon Farrell/Photocall Ireland

The Employment Equality Act, 1998 and The Equal Status Act, 2000, both of which have been amended by the Equality Act, 2004, comprise the main elements of the State's legislative anti-racism framework. The Employment Equality Act, 1998 deals with discrimination within employment, including access to employment, working conditions, dismissal, equal pay, harassment and sexual harassment, and promotion. The Equal Status Act, 2000 prohibits discrimination in the provision of goods, services, and accommodation, and in relation to educational establishments and clubs. Both Acts deal with, and prohibit, discrimination related to any of nine grounds: gender, marital status, family status, age, race, religion, disability, sexual orientation, membership of the Traveller community.

In 2004, the Equality Act, 2004 amended both pieces of equality legislation, ostensibly to implement three EU Directives and make "further and better provision in relation to equality of treatment in the workplace and elsewhere". In 2003, the Equality Authority had submitted 51 recommendations to Government on how three EU Directives should be transposed into the two Acts, and how existing anti-discrimination protection could be enhanced.²³⁴ It

recommended that it should be given a statutory role to establish, maintain and enforce standards in relation to equality action plans. Disappointingly the Government chose to ignore many of its recommendations, thus failing to seize the opportunity afforded by this Act to combat discrimination effectively. The Act has actually led to a decrease in legal protection in some cases, through the State's incorporation of lower standards of protection where contained in the EU Race Directive, into Irish law.²³⁵

Positive action, rather than simply a prohibition on discrimination, is vital if underlying reasons for inequality are to be addressed. The EU Directives in question provide a strong imperative for positive and proactive measures designed to achieve equality in practice rather than in theory, and higher remedies to discourage employers and services providers from discriminating against vulnerable people – but this path was not followed in the 2004 Act. Positive action is permitted under the 2004 Act, but not required. There is clear evidence from Northern Ireland that the imposition of a statutory duty on public authorities (and the private sector) to take positive steps to combat discrimination, and to equality proof their practices and policies, is effective.²³⁶ According to a report published in 2005 by the Equality Authority and the Equality Commission of Northern Ireland, this raises questions about Ireland's commitment under the Good Friday (Belfast) Agreement to ensure parity of rights north and south. The Equality Authority had recommended that the 2004 Act place a statutory duty on the public and private sector to promote equality across all of the nine grounds in areas covered by the 1998 and 2000 acts, but this was not adopted in the 2004 Act.²³⁸

While the State has indicated its intention to conduct research and launch a consultation process on this issue,²³⁹ the value in this is debatable, given that the Equality Authority already conducted research into this issue in advance of the 2004 Equality Act,²⁴⁰ and there is overwhelming support for such an initiative by both quasi-State bodies and civil society. While problems persist with parallel legislation in Northern Ireland, namely the administrative burden, which it has imposed on public authorities, this problem is not so great as to constitute an impediment to the incorporation of a similar provision into Irish law.²⁴¹ The fact that the State did not engage in similar preparatory work in advance of the 2004 Act raises questions about the motives behind the State's decision not to incorporate this statutory duty, particularly when read in conjunction with the other provisions of the Directive which it chose to implement or ignore.

Exemptions regarding the applicability of the Employment Equality Act to domestic workers²⁴² and the permissibility of discrimination on religious grounds as regards access and employment by public institutions in order to preserve the institution's "ethos"²⁴³ remain in Irish law in spite of the fact that these exemptions have a disproportionate negative impact on people from ethnic minority groups. Also worrying is the fact that the 2004 Act actually rolled back on some of the progressive jurisprudence of the Equality Tribunal, including its decision that limitations of grants by third level institutions to Irish citizens constituted discrimination on the ground of 'race',²⁴⁴ in direct contravention of the principle of non-regression in the Directives, and running counter to the stated policy of the Department of Education and Science in its two white papers that the principle of equality should underpin educational practice in Ireland.²⁴⁵

The three Directives require Member States to ensure that associations, organisations and legal entities with a legitimate interest in ensuring compliance with the provisions of the Directives, may engage in any judicial remedies and/or administrative procedure provided for either on

“The Committee is concerned that the non-discrimination requirement stipulated in the 2000 Equal Status Act only covers government functions falling within the definition of a ‘service’ as defined by the Act itself. (article 5(f)) In order to ensure comprehensive protection against discrimination by public authorities, the Committee urges the State party to consider expanding the scope of the Equal Status Act so as to cover the whole range of government functions and activities, including controlling duties.”

UN CERD Committee on reviewing Ireland's first report (2005)

“In relation to policy and practice on the ground, the IHRC has identified a number of specific problems with racist speech and incitement in an Irish context and where there are insufficient and inadequate measures in place to tackle these. These include the continuing ineffectiveness of the Prohibition of Incitement to Hatred Act 1989 and the delay in completing the review of this legislation. This review must be completed as a matter of urgency and a more effective legislative scheme put in place.”

Submission of the Irish Human Rights Commission to the UN CERD Committee (2005)

behalf of or in support of the claimant. However, there is no provision in the 2004 Act for trade unions and NGOs representing groups within the nine protected categories to initiate a case on behalf of an individual, or represent them in the District and Circuit Court, a glaring and unacceptable omission. The ability of these organisations to take cases on behalf of groups would have contributed greatly to the identification of institutional racism, by developing jurisprudence in relation to systematic violations of the law.²⁴⁶

According to the three Directives, sanctions imposed for their breach, “which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive”. Yet, the Act provides that the maximum amounts of compensation in the 1998 and 2000 Acts still apply even if a complainant was discriminated against, harassed or sexually harassed on more than one ground. It also prevents orders for compensation being made in favour of the Equality Authority. However, the Act does not raise the ceiling on compensation available, which is extremely limited at present, or enable cases on all nine grounds to proceed directly to the Circuit Court.

The Equal Status Act, 2000 does not expressly apply to the performance of public functions other than those that could be defined as services, and while the range of functions exempted from its provisions has not been properly explored, it is clear that the functions of Gardaí and the judiciary are exempt insofar as they are controlling duties. The CERD Committee has recommended that, in order to ensure comprehensive protection against discrimination by public authorities, Ireland “consider expanding the scope of the Equal Status Act so as to cover the whole range of government functions and activities, including controlling duties”.

2.3 Prohibition of Incitement to Hatred Act, 1989

The Prohibition of Incitement to Hatred Act is Ireland's only piece of legislation solely devoted to the prohibition of hate crimes.²⁴⁷ It is also a major bone of contention among human rights advocates, as the Department's failure to reinvigorate the Act since it was placed under review since 2000²⁴⁸ is seen as indicative of its unwillingness to seriously tackle racism. While the Act was placed under review because no convictions were made under it,²⁴⁹ the Department appears to have changed its mind as to its ineffectiveness, stating in its report to the Committee on the Elimination of All Forms of Racial Discrimination that “since then 18 cases have been taken resulting in 7 convictions. This growing body of case law under the Act suggests that application of the legislation is adapting to the growing problem of racism in Ireland”.²⁵⁰

However, the unavailability of these cases for analysis in the public domain,²⁵¹ coupled with the non-existence of an interim report on the effectiveness of this Act mean that the State's conclusions cannot be objectively supported. Moreover, it appears that this Act has been made the subject of an “ongoing review”,²⁵² meaning that it is being monitored on a continuing basis, rather than being the subject of a fixed-term review.²⁵³ The State has indicated that it shall review the Act as part of its compliance with the Council of Europe's Framework Decision on Racism and Xenophobia.²⁵⁴ It is important to note that this Framework Decision has not even been finalised yet, and Ireland shall have two years following its adoption to make relevant amendments to Irish law.²⁵⁵ The CERD Committee, “concerned that racist and xenophobic incidents and discriminatory attitudes towards ethnic minorities are still encountered in the country”, has recommended that the State provide stronger legislative protection against racism, particularly through the incorporation “a provision that committing an offence with a

racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment" into law.²⁵⁶

- **Recommendation:** Introduce appropriate legislative measures to ensure that committing an offence with a racist motivation or aim constitutes an aggravating circumstance allowing for a more severe punishment.

2.4 European Convention on Human Rights Act, 2003

The European Convention on Human rights (ECHR) has been discussed earlier. While the impact of the ECHR on Irish legislation can be clearly seen in the introduction of civil legal aid in the wake of the European Court of Human Rights' decision in *Airey v. Ireland*²⁵⁷ and the decriminalisation of homosexuality after *Norris v. Ireland*²⁵⁸ in 2003, it was incorporated into Irish law in the European Convention on Human Rights Act, 2003. This was intended to increase the effectiveness of the ECHR by making the rights it contains judiciable in Irish courts, thus making it less likely that persons whose rights had been breached would need to take their cases to the European Court of Human Rights in Strasbourg. It requires every organ of the State, i.e. state authorities other than the judiciary, to perform its functions in a manner compatible with the ECHR. It requires the courts to interpret any "statutory provision or rule of law" as far as possible in a manner compatible with the ECHR Act.²⁵⁹ However, the indirect or interpretative model by way of which the Convention was incorporated into Irish law reduced its potential effectiveness. For example, under the Act, the courts do not have the power to strike down legislation which they find to be incompatible with the ECHR. Instead, they can only make a declaration of incompatibility, which does not affect the continued operation of the legislation. The Act is also problematic in terms of the individual remedies it offers complainants. A sentence cannot be quashed under the Act, and there is no provision for an injunction in order to prevent a right being breached. Also, the damages available to claimants are unsatisfactory, both in terms of the level of compensation available and the process which precedes the awarding of such compensation.²⁶⁰

While the judgements of the European Court of Human Rights do not bind the Irish judiciary in ruling on this Act, they are persuasive.²⁶¹ Of particular relevance is the July 2005 ruling of the Grand Chamber of the European Court of Human Rights in *Nachova and Others v. Bulgaria* that there had been a violation of Article 14 of the Convention taken in conjunction with Article 2 of the Convention in that the Bulgarian authorities had failed to investigate possible racist motives behind the events that had led to the killings in questions. The Court's ruling makes it clear that European states have an obligation to investigate possible racist motives behind acts of violence.²⁶² The Irish Human Rights Commission is empowered under section 8(h) of the Human Rights Commission Act, 2000, at the discretion of the court, to appear as *amicus curiae* in domestic proceedings that involve or are concerned with the human rights of any person, and it has used this to offer the courts its interpretations of the application of the ECHR in instant cases.²⁶³

2.5 Belfast Agreement

In signing the Multi-Party Agreement signed in Belfast in 1998 (Belfast Agreement)²⁶⁴ the Irish and UK Governments undertook to protect human rights and promote equality. Importantly for Ireland, the Agreement contains the specific obligation of ensuring parity of rights north and south. While there is considerable debate about the legal status of the Agreement in Irish

“ECRI reiterates its recommendation that consideration be given to the possibility of a constitutional amendment expressly ensuring equality and other human rights for all individuals under Irish jurisdiction.”

European Commission
against Racism and
Intolerance
Second report on Ireland
Adopted on 22 June
2001 and made public
on 23 April 2002

law, according to a report commissioned by Equality Authority and the Equality Commission of Northern Ireland, *Equivalence in Promoting Equality*, it “imposes a binding obligation upon Ireland to ensure that at least an equivalence of rights protection is in place in Ireland as that applying in Northern Ireland”, and this “appears to require the strengthening and extension of some elements of anti-discrimination and human rights legislation in Ireland, as well as the introduction of some form of positive public sector equality duty”.²⁶⁵ The report states that the “equality dimension of the Agreement’s rights provisions should not be neglected, and it must be made effective, real and tangible in impact”.

It observes that the debate surrounding the Bill of Rights in Northern Ireland provided for under the Agreement has not received the attention in Ireland that it deserves, and advises a similar debate be held in Ireland as to how to meet international standards, and how an equivalence of rights can be met and sustained in Ireland, especially in view of the commitment under the Agreement to consider the possibility of establishing a joint charter “reflecting and endorsing” agreed measures for the protection of fundamental rights north and south. It observes a tendency to date, in legal and political debate in Ireland, to “confine consideration of the concept of ‘equivalence of rights’ to the comparatively narrow (if important) issue of how to incorporate the European Convention on Human Rights into its domestic law”. However, it suggests “the Agreement’s requirements should be interpreted with reference to the full spectrum of human rights instruments which the two state parties have ratified”.

In a number of key areas, it finds there is a greater degree of equality protection in Northern Ireland than exists in Ireland, and where no action has been taken to ensure equivalence. Regarding the possible application of Article 40.1 of the Constitution and/or the ECHR Act, it states:

“Art. 40.1 may in theory grant a high level of protection to the right to equality of treatment, but in actuality its interpretation and application has often lagged behind the standards set by the European Court of Human Rights. The European Convention on Human Rights Act 2003 now partially remedies the lack of equivalence. However, certain well-canvassed problems exist with respect to the provisions of the Act. The scope of remedies available under the Act when a breach is held to exist appears in section 3 to be limited to damages, which in many cases may deprive litigants of effective relief.”

Regarding Ireland’s equality legislation, it concludes that, if the Equal Status Act is interpreted as not applying to the performance of public functions, “a clear lack of equivalence would exist as between Northern Ireland and Ireland, in that discrimination in the performance of public functions on the grounds of disability, religion and political opinion would be prohibited in Northern Ireland and not in Ireland”. It suggests that, since “reliance on either Article 40.1 or the ECHR Act appears unsatisfactory”, the Equal Status Act should be interpreted by reference to the Agreement’s provisions so as to “cure” this gap, or the Act should be amended to close this gap. Whichever option is chosen, it concludes, “[t]here is a need for legal certainty and a definite legislative position: the scope of anti-discrimination controls should not remain unclear”. On compensation available under the 1998 and 2000 Acts, as amended, it finds “the restrictions on the amount of damages awardable in Ireland represent a considerable lack of equivalence”. It further suggests that “positive duties could be introduced to give a statutory backbone to equality mainstreaming”. It would appear then, that the Agreement offers considerable scope for driving expansion and improvement in Ireland’s equality protections.

- **Recommendation:** Give serious consideration to Ireland's obligations under the Agreement, and the areas of possible government action identified by the Equality Authority and the Equality Commission of Northern Ireland in their 2005 commissioned review, *Equivalence in Promoting Equality*.

2.6 Specialised bodies and independent institutions:

A number of specialised bodies have specific responsibility for monitoring human rights and anti-racism within their mandate. A problem common to all of these semi-State bodies is the government's consistent failure to give due weight to their recommendations, and to adequately resource their activities. The CERD Committee has advised the Irish Government to ensure that statutory institutions charged with promoting and protecting equality and human rights are adequately resourced.

- **Recommendation:** Give due weight to the recommendations of the Irish Human Rights Commission, Equality Authority and other relevant statutory bodies charged with promoting and protecting equality and human rights, and ensure that they are adequately resourced to meet their statutory obligations.

2.6.1 The Equality Authority

The Equality Authority is the oldest and largest of the statutory bodies working in this field of activity. It was established in 1998 under the Employment Equality Act, along with the Equality Tribunal (see below). Its mandate is limited by the scope of Ireland's equality legislation, which governs its sphere of activity, and set out in its Strategic Plan for 2006 to 2008, published in February 2006. In addition to acting as a public information centre, it contributes to the development of Ireland's equality legislation through research and the elaboration of equality strategies, and also brings strategic test cases to the Equality Tribunal.²⁶⁶

Although the Equality Authority's mandate includes Ireland's equality legislation in the area of service providers as well as employers, it had initially carried out more research and policy work in the area of employment rights than service-user rights. The Chief Executive of the Equality Authority, Niall Crowley, has attributed this imbalance to the fact that the infrastructure for employment rights was pre-existent in terms of the labour court and the fact that Ireland's employment equality legislation pre-dates its service-user legislation, but said that this imbalance has now been corrected.²⁶⁷ Also, as has been noted in relation to the Equality Authority's Code of Practice on Sexual Harassment and Harassment at Work, regulations pertaining to equality are easier to enforce in a workplace than in a situation where external users come into the equation.²⁶⁸ However, as noted in Section 2.2 above, there are worrying gaps exist between the Equality Authority's recommendations and the actual situation on the ground.²⁶⁹

2.6.2 Equality Tribunal

The Equality Tribunal is an independent quasi-judicial body established under the Employment Equality Act, 1998, and investigates and decides on complaints of alleged discrimination under both pieces equality legislation. It is separate from the Equality Authority, and its decisions and mediated settlements are legally binding. Its specially trained Equality Officers, who are independent and impartial in their functions, have wide powers to investigate complaints, and in cases where a complaint is upheld, they have powers to order compensation, redress and/or that a specified course of action be taken. Importantly, the procedure is free of charge. The

“The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country. Such a statistic should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism.”

Possible indicator of racial discrimination UN CERD Committee General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal justice System (adopted on 17th August 2005)

“The Commission is understaffed and under-funded in terms of its capacity to perform all its prescribed statutory functions.”

Irish Human Rights Commission
Annual Report 2004
(2005)

establishment of this Office was a welcome development, as it offers an innovative way to facilitate the access to justice for persons having experienced discrimination. However, as with the other bodies profiled here, inadequate resources has hampered its effectiveness, and cases can take considerable time to be heard, undermining the purpose of this machinery, and its attractiveness to victims of discrimination.

Furthermore, the Intoxicating Liquor Act, 2003 removed from the jurisdiction of the Equality Tribunal discrimination cases relating to licensed premises. This Act was evidently in response to lobbying from licensed vintners' groups, since a large proportion of cases brought to the Tribunal involved licensed premises. The effect of this is that claimants must bring cases to the District court, a far more cumbersome, protracted and expensive option. The majority of these cases were brought by members of the Traveller community, so in terms of its effect, if not, at least on a literal interpretation, its stated purpose, this is clear instance of institutional racism at the level of legislature. It also raises the concern that a precedent has been set, and other vested interests may be successful in securing further erosions of the Tribunal's jurisdiction.

2.6.3 The Irish Human Rights Commission

The Irish Human Rights Commission was established by the Human Rights Commission Act, 2000, under the aegis of the Belfast Agreement. Although anti-racism constitutes one of its four priorities²⁷⁰ and it has been quite outspoken about certain government policies and practices,²⁷¹ a lack of resources has greatly impeded its effectiveness. Indeed, the level of State support given to it and other bodies was called into question by the Committee on the Elimination of All Forms of Racial Discrimination, which recommended that the State provide

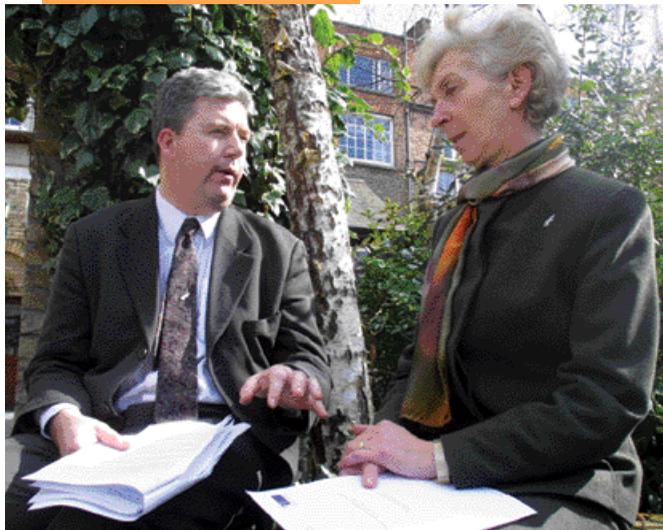
these institutions “with adequate funding and resources to enable them to exercise the full range of their statutory functions.”²⁷²

2.6.4 The National Consultative Committee on Racism and Interculturalism

The foundations of the NCCRI lie in a committee established to co-ordinate activities for the European Year against Racism in 1997. It is an independent expert body, comprising a partnership of non-governmental organisations, social partners, state agencies and government departments. It provides advice and technical assistance to government and non-government organisations to enable them to implement anti-racism and intercultural strategies; seeks to inform policy within government and statutory agencies to heighten awareness of the anti-racism and intercultural policy perspectives; and organises thematic roundtables, seminars and conferences to encourage dialogue

and information exchange. It is to the fore in promoting progress of the National Action Plan against Racism.

Anti-racism training constitutes part of its mandate and its work in this area is very well-respected. However, a lack of resources impedes this aspect of the NCCRI's work being implemented in a more comprehensive and systematic way across government departments and institutions.²⁷⁴



Director of NCCRI, Philip Watt, and Chair of NCCRI, Anastasia Crickley, before the publication of an NCCRI report on incidents relating to racism in Dublin in March 2002

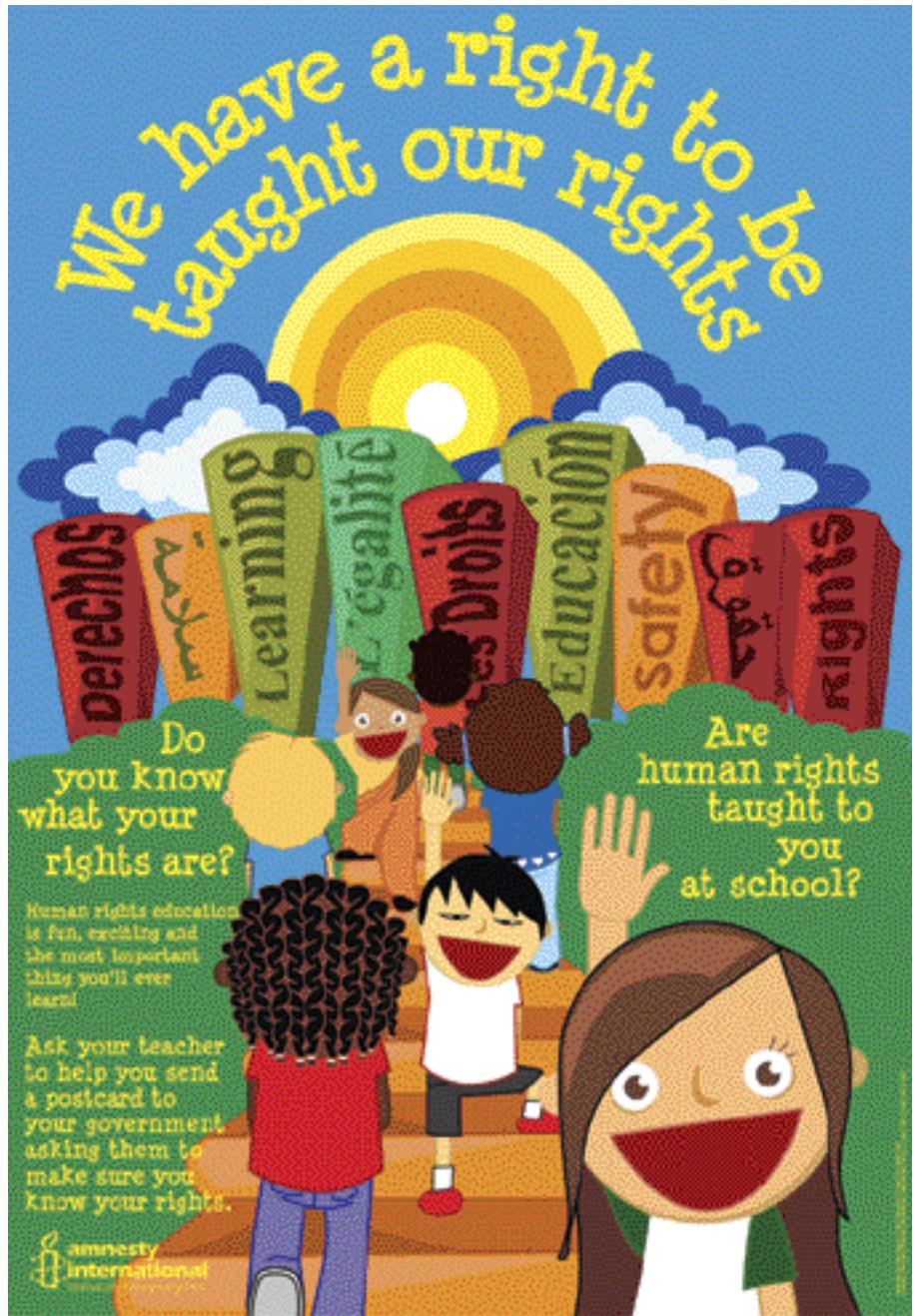
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Footnotes

213. Article 41.1: "The State recognises the family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and inprescriptible rights, antecedent and superior to all positive law." Article 41.2: The State, therefore, guarantees to protect the family in its Constitution, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State."
214. See Constitutional Review Group (1996), *Report of the Constitutional Review Group* Government of Ireland, Dublin, at p. 241.
215. O Cinneide (2005), *Equivalence in Promoting Equality*, Equality Commission for Northern Ireland & Equality Authority.
216. Constitutional Review Group, (1996), *Report of the Constitutional Review Group* Government of Ireland, Dublin, at p. 265. At the same time, it is accepted that certain rights may be confined to citizens in "limited circumstances". Connelly and Lynch (1996), "Equality before the law", in *Report of the Constitutional Review Group*, at p. 586.
217. Weissbrodt, Special Rapporteur on the Rights of Non-Citizens to the Subcommittee on the Protection of Minorities, "The Rights of non-citizens, Addendum – Summary of Comments received from UN Member States to Special Rapporteur's Questionnaire" (2003), E/CN.4/Sub.2/2003/23/Add.4, at para. 26.
218. See for example *Minister for Justice v. Wang Zhu Jie*[1993] 1 IR 116; [1993] ILRM 64, see also Kelly, Hogan, and White (1994), *The Irish Constitution*, Butterworths: Dublin, at p. 680.
219. Binchy, "Citizenship and the International Remit of Constitutional Protection" (2004), in *The Citizenship Referendum: Implications for the Constitution and Human Rights* School of Law, Trinity College: Dublin, pp. 48-90, at p.80. See also Kelly, Hogan, and White, note 212 above, at p. 680. *State (Mc Fadden) v. Governor of Mountjoy Prison* [1981] ILRM 113.
220. *The State (Nichalou) v. An Bord Uchtála*[1966] IR 567 The case was brought by a British citizen, who was the father of a child born outside of marriage, adopted without his knowledge. His challenge to adoption legislation, which did not require the father to be informed in the case of adoption, was unsuccessful, partly on the grounds that he could not claim equality before the law in the same way as an Irish citizen. For an analysis of the question of citizenship within this case see Binchy, note 219 above, at p.57-62; Kelly, Hogan, and White, note 218 above, at p. 679
221. Binchy, note 219 above, at p. 57.
222. Kelly, Hogan, and White, note 218 above, at p. 679.
223. See NGO Alliance, note 64 above, at p. 21. See also Irish Centre for Human Rights, 25.02.2003, "Judges' Apologies for Racist Comments not Satisfactory says Irish Centre for Human Rights" ,
224. Article 45
225. Article 45.2.1. Article. 45.2.1, 45.1.2
226. Article 45: "The principles of social policy set forth in this articles are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution". See also Constitutional Review Group, note 216 above, at p. 391
227. Constitutional Review Group, note 216 above, at p.391-2.
228. Kenny (2004), *The Implications of the Citizenship Rights Referendum on the Life of Migrants and Irish People*, www.integratingireland.ie/pdfs/13_referendum.Analysis.pdf, consulted 24.08.2004, at p. 33.
229. Irish Human Rights Commission (IHRC) (2004), "Observations on the Proposed Referendum on Citizenship", at p.23, 13.
230. SIPTU, Health Crisis Campaign Press Release, 19.07.2005. The attitude persists that asylum seekers are to blame for placing the Health Service under strain. Interview with HSEA, 14.04.2005.
231. Catherine Reilly, 03 July 2004, "Late Arrival of Birth Statistics", *Metro Eireann*, at p. 3.
232. See section 4.1.1 below.
233. Interview with Minister of State at the Department of Justice with special responsibility for equality, Frank Fahey TD, 18.04.2005. It is important to note that the Minister's reply only referred to debate within the Oireachtas. He did not accept that there was inadequate debate in public, basing his reply on the high-turnout in favour of the referendum.
234. Equality Authority (2003), Overview of Employment Equality Act 1998 and the Equal Status Act 2000 in light of the Transposition of the European Union 'Race' Directive, Framework Employment Directive and the Gender Equal Treatment Directive.
235. For the Equality Authority's view on how the Directive should have been incorporated into Irish law, see

- Equality Authority (2003), *Overview of Employment Equality Act 1998 and the Equal Status Act 2000 in light of the Transposition of the European Union 'Race' Directive, Framework Employment Directive and the Gender Equal Treatment Directive*, See also Irish Human Rights Commission (IHRC), 09.06.2004, "Press Release on Equality Bill 2004". In its submission to the Equality Bill 2004, the Human Rights Commission commented that the Bill did "not go far enough" in order to comply with European Union legal standards. Furthermore, it commented that "some of the new measures included may have the effect of undermining existing non-discrimination protections, by creating new categories of exemptions and retracting on decisions of the Equality Tribunal".
236. Niall Crowley, note 138 above, pp.4-9, at p.8. Evelyn Collins, note 144 above, at p.13.
237. Note 215 above.
238. See Equality Authority (2003), *Report on Conference – Mainstreaming Equality: Models for a Statutory Duty*, 27th February 2003, Niall Crowley, at foreword on the Equality Authority's recommendation that a positive statutory duty be introduced as part of the Equality Act 2004.
239. The Department of Justice, Equality and Law Reform, *Planning for Diversity: The National Action Plan against Racism* (2005), at p. 73
240. See Equality Authority, note 238 above. See also Equality Authority, note 235 above, at p.25.
241. Evelyn Collins points out that problems with the implementation of this positive statutory duty in Northern Ireland were linked to resource constraints. "No additional resources were provided for public authorities to deliver the duties, and this has been a real issue in Northern Ireland, as the implementation of Section 75 requires necessary input in terms of people, time and money". Evelyn Collins, note 238 above, pp. 13-19, at p. 17.
242. Employment Equality Act 1998, number 21 of 1998, at section 37(5): "In relation to the discriminatory grounds specified in paragraphs (a) to (h) in Section 28(1) nothing in this part or part II applies to the employment of any person for the purposes of a private household"
243. Equal Status Act, number 8 of 2000, at section 7(3): "an educational establishment does not discriminate under subsection (2) by reason only that – (c) where the establishment is a school providing primary or post-primary education and the objective of the school is to provide education which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school".
244. The Equal Status Act 2000, number 8 of 2000, at section 7 as amended by the Equality Act 2004, number 24 of 2004, at section 50. Section 7(5)(b) reads: "The Minister for Education does not discriminate where he or she (i) requires grants of third level institutions to be restricted to persons who are nationals of a member State of the European Union or (ii) requires such nationals and other persons to be treated differently in relation to the making of grants". The Human Rights Commission has classified this exemption as "an unjustified erosion of existing equality protections in the area of access to education". See Equal Status Act 2000, Equality Officer Decision DES-S2003-042/043
245. See generally on this Act, Equality Coalition Submission on the Equality Bill 2004.
246. Irish Human Rights Commission (IHRC), 09.06.2004, "Press Release on Equality Bill 2004". The Human Rights Commission queried this omission before the Bill's enactment.
247. While the Gardai tend to rely upon other Acts, such as the Criminal Justice (Public Order) Act 1994, number 2 of 1994 and the Non-Fatal Offences against the Person Act 1997, number 26 of 1997, in cases where racism is a motivating factor, neither of these Acts contain a provision, which allows the racist element of a crime to be taken into account and sanctioned appropriately. The concept of a "racially aggravated offence" does not appear in Irish law. See Crime and Disorder Act, at part I, sections 28 – 32, for a definition of a "racially aggravated offence". See also Section 5.2.5(b) of Part I of this report for a discussion of the problems which have occurred with the implementation of this law in the United Kingdom.
248. First National Report by Ireland to the Committee on Elimination of Racial Discrimination (2004), Government Publications, Dublin, at p.10, at para.13
249. First National Report by Ireland to the Committee on Elimination of Racial Discrimination (2004), Government Publications, Dublin, at p.10, at para.13
250. First National Report by Ireland to the Committee on Elimination of Racial Discrimination (2004), Government Publications, Dublin, at p.10, at para.13
251. The facts of the cases are unknown, which makes it difficult to measure the effectiveness of the legislation. This may result from the fact that these cases were heard in the district courts, which have no system of court reporting in operation. See section 3.5 on the problems relating to the implementation of

- anti-racist legislation in the United Kingdom.
252. The Department of Justice, Equality and Law Reform, *Planning for Diversity: The National Action Plan against Racism* (2005), at p.76: "The Prohibition of the Incitement to Racial Hatred Act is the subject of an ongoing review to determine its effectiveness"
253. At Ireland's hearing before the Committee on the Elimination of All Forms of Racial Discrimination, Mr. Valencia Rodríguez asked the State to provide more information to the Committee on the cases taken under this Act. He asked: "What sentences had been imposed and what had happened in the cases where there had been no conviction?", Committee on the Elimination of All Forms of Racial Discrimination, "Consideration of Reports, Comments and Information submitted by States Parties under Article 9 of the Convention: Initial and Second Periodic Reports of Ireland", U.N Doc. CERD/C/SR.1687, at para. 39
254. Dáil Éireann - Volume 555 - 17 October, 2002 "Written Answers. - Anti-Racism Measures". Minister McDowell: "On 28 November 2001, the European Commission presented a proposal for a Council framework decision on combating racism and xenophobia. It is intended that the framework decision will replace an existing joint action concerning action to combat racism and xenophobia. Negotiations on the framework decision are progressing. I consider it appropriate to await the outcome of these negotiations before finalising the review of our existing legislation".
255. See The Migration Policy Group web-site, at <http://www.migpolgroup.com/monitors/default.asp?action=monitorindex&MonitorID=34>, consulted 30.04.2005 for an update on how negotiations on this Framework Decision are progressing.
256. Note 6 above.
257. 6289/73 [1979] ECHR 3 (9 October 1979)
258. 10581/83 [1988] ECHR 22 (26 October 1988)
259. In accordance with "rules of law relating to such interpretation and application"
260. For an analysis of the Act, see Kilkelly (ed.) (2004), *ECHR and Irish Law*, Jordan: Bristol
261. Section 4.
262. Case of Nachova and Others v. Bulgaria, Applications nos. 43577/98 and 43579/98, (6 July 2005)
263. For instance, in 2005, the IHRC submitted an amicus briefing in the Supreme Court case of *Dublin City Council v Fennell* heard on 12 April 2005.
264. Agreement Reached in the Multi-Party Negotiations (Cm 3883, 1998); 37 I.L.M. 751 (1998).
265. Note 215 above.
266. See www.equality.ie
267. Interview with Niall Crowley, 09.02.2005. Employment Equality Act 1998, number 21 of 1998, Equal Status Act 2000, number 8 of 2000.
268. Equality Authority (2002), Code of Practice on Sexual Harassment and Harassment at Work", at p.23
269. NGO Alliance (2004), *In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* at p.21 makes this point.
270. Irish Human Rights Commission (2003), *Promoting and Protecting Human Rights in Irish Society for 2003 - 2006*, at p. 13-14
271. See for example: The Irish Human Rights Commission (IHRC) (2005), *Submission of the Irish Human Rights Commission to the UN Committee on the Elimination of Racial Discrimination in respect of Ireland's First Report under the International Convention on the Elimination of all Forms of Racial Discrimination*
272. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N Doc. CERD/C/IRL/CO/2, at para.12: "The Committee recommends that the State party provide the newly established institutions in the field of human rights and non-discrimination with adequate funding and resources to enable them to exercise the full range of their statutory functions, and also support the NGO community".
273. <http://www.nccri.com/nccri-background.html>, consulted 11.02.2005
264. The NCCRI currently employs one anti-racism trainer. See <http://www.nccri.com/nccri-staff.html>, consulted 25.04.2005



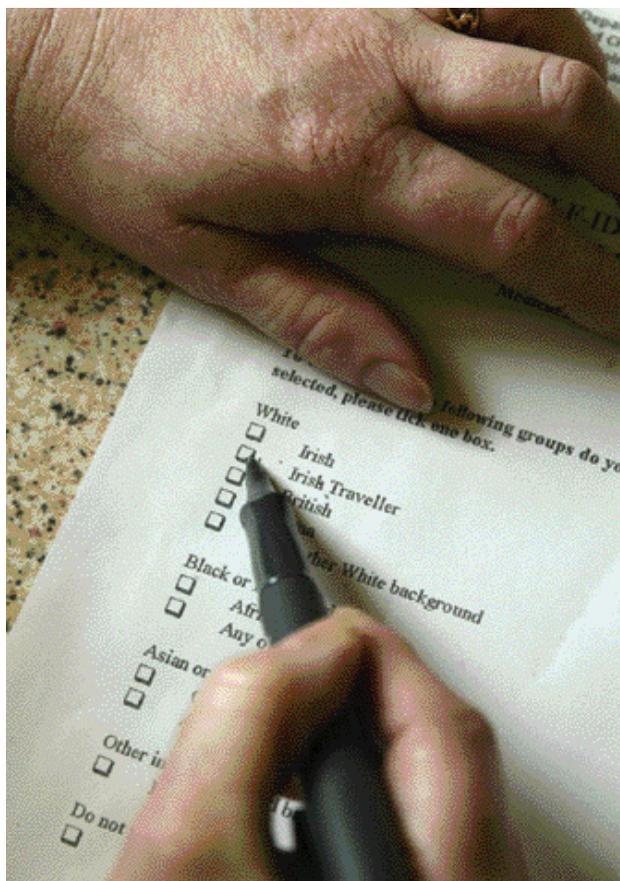
3. CROSS-DEPARTMENTAL STRATEGIC PLANS AND PRACTICES

A number of cross-departmental strategy plans and programmes exist, which have a potentially very positive impact on human rights and anti-racism in Ireland.

3.1 Central Statistics Collection

In order to evaluate the impact of potentially discriminatory law and policies, and the efficacy of antidiscrimination laws and policies, statistical data should be routinely collected, analysed and available in an accessible format to policy-makers and the public. Data collection on the whole is inadequate and fragmented. Hence data cannot be analysed by government, so there is little meaningful investigation into what precisely the state is endeavouring to achieve and/or prevent. Without such data, official evaluation of the effectiveness of state measures to combat and provide redress for racism, and discrimination more widely, is almost impossible. For instance, in relation to legal protections available to Traveller women, Pavee Point has observed:

"There is a dearth of data research on the experiences of travellers, or other minority ethnic groups, within the broad Criminal Justice System in Ireland. This is a result of existing data collection methods by the Garda Síochána and other organisations with criminal prosecution functions not generating, collating and presenting data with an ethnic dimension to it. None the less, anecdotal, individual experience and limited research, as well as our experience of working on issues of exclusion for travellers highlights a high level of mistrust of both the legal system and the Gardaí, inconsistent responses and racism. Gardaí work in relation to VAW, especially in relation to ethnic groups needs to be monitored to ensure equality of outcomes and for the continued improvement of services. Traveller women's experiences of the legal system remain largely unknown."



Sample census question on ethnicity submitted by Pavee Point to the Central Statistics Office in 2000

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A remarkable example of a missed opportunity to capture information is the 2002 census, when, despite significant pressure from nongovernmental organisations, the government decided not to include a question on ethnicity, beyond its traditional question on membership of the Traveller community. Neither has information on ethnicity been collected in government Quarterly Household Survey. The use of accurate and systematic data collection, disaggregated over discriminated against groups, and its analysis to measure progress across the range of responsible government departments and policy areas is not in evidence. This includes wider data collection on gender, age, disability, etc. to facilitate identification of the specific needs of minority ethnic groups, and to assist in the development of strategies to address these needs.

A report on equality data commissioned by the Equality Authority, *Building the Picture*, insisted that equality statistics are critical to the formulation of policy and the effective monitoring of progress towards greater equality, and recommended as a priority, that core sources of

“Social attitudes largely determine the wider cultural environment within which equality legislation and equality policy function. In this context, it is crucial to develop data systems aimed at establishing a sense of the nature of social attitudes and their evolution over time. Attitudinal data is highly sensitive to the use of language, the definitions and concepts applied and to the context in which surveys are conducted. Availability of attitudinal data in Ireland is very limited and uneven, and there is no regular series of attitudinal data that can monitor issues such as prejudice, discrimination and intolerance.”

Barry,
Building the Picture
Equality Authority
(2000)

national, regional and local data be reviewed and modified in order to ensure that a profile of relevant populations be fully developed.²⁷⁵ While published in 2000, many of the gaps it identified remain unaddressed. It found that one of the key problems with the current systems of data collection is that it is recorded by a variety of agencies and organisations, and is highly dispersed and fragmented; and that those affected by such fragmented, dispersed and incomplete systems of data collection are often those vulnerable to inequality and discrimination. It found that “it is frequently the commitment of the voluntary and community sector and of individual researchers, rather than the State, which has ensured that there is a certain amount of relevant data available”.

As equality-relevant data is gathered as part of the collection of official data, but also by a variety of governmental, statutory, private and community sources, it recommended that it is essential that responsibility be clearly allocated. It also recommended that structures be put in place to ensure a co-ordinated, horizontal approach to the collection and review of data across the system, with the establishment of an inter-agency strategic committee charged with responsibility for developing a comprehensive system of data collection and review, and also for ensuring that all the relevant agencies and interests are drawn into the process. Such a committee, it advised, should be composed of representatives from the various government departments, statutory agencies, private, community and voluntary organisations and social partners that are involved in data collection, as well as representatives from affected groups. It would also require a clear commitment of authority and resources from government, including ensuring appropriate nominees from key departments and preferably an independent chair. Definite targets and timescales should be established for the development of a comprehensive system of equality data based, where possible, on agreement with the relevant interests and following consultation with affected groups. Statutory instruments should be used where necessary and appropriate to ensure that government departments, statutory agencies and others collect data in required formats without loss of privacy for individual and households. Measures would also have to be put in place to ensure that public agencies and publicly funded organisations and activities generate data in a manner which contributes to gender and equality proofing. It recommended that social indicators be developed, in consultation with relevant agencies and representatives, in order to monitor progress towards greater equality for specific groups and in specific areas.

- Recommendation: Immediate steps should be taken systematically and comprehensively to gather, compile and analyse data from all relevant sources, including minority ethnic communities themselves, about the impact of state laws, policies and practices on their lives, and on the effectiveness of state anti-racism and equality measures.

3.2 National Action Plan against Racism

The Department of Justice, Equality and Law Reform was responsible for drafting Ireland's National Action Plan against Racism, 'Planning for Diversity', which was launched on January 20th 2005, in compliance with the commitment undertaken by Ireland at the World Conference against Racism, Xenophobia and related forms of Intolerance held in Durban, South Africa in 2001.²⁷⁶ The Plan urges state officials in key policy areas at national, regional and local level to give reasonable consideration to cultural and ethnic diversity when planning, implementing and reviewing the policy and services in which they are engaged. Under the Plan, Anti Racism and Diversity (ARD) plans are to be developed on a phased basis at a city and

county level. The Department appointed a Strategic Monitoring Group to oversee the implementation of the Plan, which includes representatives of Government, social partners and relevant interest groups, and a website to promote its provisions (www.diversityireland.ie). The plan is to be welcomed and contains many positive aspects. However, the emphasis which it places on the development of plans for reasonable accommodation as a tool for combating racism²⁷⁷ is questionable, given that the obligation to reasonably accommodate difference only relates to the prevention of discrimination on the grounds of disability under Ireland's current equality legislation.²⁷⁸

Furthermore, the appropriateness of reasonably accommodating diversity as a means for combating racism at the level of the State and its institutions is dubious, given the deeply-entrenched nature of racism at these levels, and the absence of positive mainstreaming and affirmative action duties in equality legislation. It should not be allowed to become the only tool for combating this form of discrimination.²⁷⁹ Moreover, as was pointed out by a number of activists at the time of the launch of the National Action Plan, other State policies and practices should not be allowed to undermine its human rights and anti-racism initiatives.²⁸⁰

3.3 Task Force on the Travelling Community

The Report of the Task Force on the Travelling Community was published in 1995 making detailed recommendation for government action. A monitoring committee was established in 1998 to monitor progress in the implementation of the recommendations. The committee is chaired by officials of Department of Justice, Equality and Law Reform and comprises representatives of national Traveller organisations, relevant Government Departments and the Social Partners. The second progress report of the monitoring committee was published in December 2005. While noting progress in a number of areas, including the Traveller Health Strategy and the adoption by local authorities of targets for traveller accommodation programmes, it observes that certain blockages remain in advancing Travellers' equality. It notes repeatedly that there is insufficient data to design policy effectively, and the range and quality of relevant statistics needs to be improved. It also points to the lack of consultation with Travellers as another regular problem, and suggests that acceptance that Traveller representatives should be involved in issues which affect them needs to be put on a more formal footing. In relation to the All Ireland Traveller Health Survey and the National Traveller Health Strategy, it says they are welcomed by Travellers and have the potential to deliver results, but that this will only be achieved if they are properly funded. It advises that anti-racism modules should be an obligatory component of pre-service training and in-service training at all levels (including senior management levels) for service providers; codes of practice should also be drawn up in partnership with Traveller organizations; implementation of the Control of Horses Act 1998, insofar as it impacts on Travellers, should be reviewed. It also points out the lack of information on District Court procedures available to those who feel that have been discriminated against by licensed premises since the Intoxicating Liquor Act removed those cases from the jurisdiction of the Equality Tribunal.

In 2005, the UN CERD Committee recommended the Irish Government to "intensify its efforts to fully implement the recommendations of the Task Force on the Traveller community, and that all necessary measures be urgently taken to improve access by Travellers to ... health services and to accommodation suitable to their lifestyle".

"There are many areas in which the civil and political rights of Travellers are being violated on a continual basis, particularly in relation to their right to freedom from discrimination under Article 26 of the ICCPR. The scale of violations of the economic, social and cultural rights of Travellers is even more striking"

Submission of the Irish Human Rights Commission to the UN CERD Committee (2005)

“In view of the lack of data on Black and minority ethnic groups in Ireland, it is hard to know how the Government can accurately assess the degree to which the policies and initiatives it has outlined in its First Report are countering the problems of racial discrimination which they may face.”

*NGO Alliance Shadow Report
In Response to the Irish Government’s First National Report to CERD (2004)*

3.4 Other Plan and Strategies

The National Development Plan (NDP), makes specific provision for minority ethnic groups along a number of subcategories. However, as mentioned in Part I (section 3.1), it is regrettable that equality mainstreaming and more specifically anti-racism mainstreaming is not a compulsory element of the NDP, along the same lines as gender mainstreaming and poverty-proofing. While equality-proofing constitutes an element of the National Anti-Poverty Strategy (NAPS), the emphasis on anti-racism as part of the overall plan is questionable. In particular, the fact that the Direct Provision scheme, which governs social welfare arrangements for asylum seekers is exempt from poverty-proofing is highly problematic.²⁸¹ To exempt Direct Provision from poverty-proofing suggests a certain awareness that this scheme does not allow for an adequate standard of living in accordance with article 11 of the ICESCR and article 25.1 of the UDHR.

The Sustaining Progress (Social Partnership Agreement) 2003–2005 offers significant potential for combating racism at the level of the state and its institutions through its emphasis on equality mainstreaming, equality-proofing, evidence-based policy making, quality service provision for all as well as targeted initiatives in the field of healthcare and education. Although it commits to “support disadvantaged communities”, it does not name any specific minority ethnic communities, aside from Travellers, who are not recognized as such at an official level. An emphasis on anti-racism, through a commitment to collect and analyse data that is disaggregated on the basis of ethnicity would greatly contribute to the potential of Social Partnership Agreements as a framework in which racism at the level of the State and its institutions can be combated.

3.5 A National Human Rights Action Plan?

In its participation in the international human rights framework Ireland has undertaken to ensure that its Constitution, laws, policies, budgets and practices reflect these legal obligations and achieve, rather than undermine, the minimum standards to which it has agreed. Ireland's ratifying human rights treaties requires not just the formal commitment to respect human rights norms, but also the integration of those minimum standards into all plans, policies, budgets, processes and institutions. The state accepted, in principle and as a legal requirement, that human rights should and would provide a process through which government would build a fairer, more equitable society.

These principles, embedded in international human rights standards, also led to the emergence of human rights based approaches to development, i.e. the understanding that human development improves when human rights are the benchmark and framework for national development. However, real change involves changing attitudes and deepening understanding. While human rights are the entitlement of everyone on an equal basis, the level of development of a society can be measured by the extent to which it includes and protects the most marginalised and most vulnerable; by our standards of accountability; by the extent to which people are empowered. Human rights based approaches are now used increasingly in the developing world, and are often set as condition for overseas aid by other governments – but they are equally essential as the framework for governance in all countries, including here in Ireland.²⁸³

The five inter-connected principles internationally recognised as forming the core of human rights based approaches are:

1. Express application of the international human rights framework;
2. Empowerment;
3. Participation;
4. Nondiscrimination and prioritisation of vulnerable groups; and
5. Accountability.

The prioritisation of vulnerable groups means that, as a priority, those who are vulnerable need to be identified on national and local levels. This requires that official data is disaggregated by religion, ethnicity, language, sex, migrant status, age and any other category of human rights concern. It also requires equality proofing as part of the wider human rights proofing of all programming, i.e. assessing the implications for groups vulnerable to discrimination of any planned action, including policies, legislation and programmes, in any area and at any level.

It is clear that, alone or in combination, state law, plans and strategies so far adopted do not provide an adequate framework in which all five core principles can be guaranteed, either in the case of minority ethnic groups or more generally. At the 1993 World Conference on Human Rights, the Vienna Declaration and Programme of Action agreed by Ireland and 170 other states, where a recommendation was adopted that each State would "consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights." It was not required that these Plans would be legally binding instruments, but that they should have a strong persuasive character. In their joint 2005 publication, *Our Rights, Our Future*²⁸⁴, Amnesty International and the International Human Rights Network urged the Irish Government to consider taking some initial steps towards adopting such a Plan, including:

- Coordinate disparate civil society actors into a broad-based human rights movement, including "traditional" human rights actors, media, churches and trade unions;
- Incorporate direct legal enforcement through a constitutional amendment to comply with existing treaty obligations;
- Strengthen the Human Rights Commission to become a catalyst promoting HRBA discussed in this document; and
- Develop a national programme of human rights education and awareness-raising through formal and informal education, media debates, etc.

3.6 UN Migrants Workers' Convention

The 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families, which entered in to force in June 2003, is included in this Section as it is the only one of seven core UN human rights treaties that Ireland has not ratified, and on two levels, it is relevant to the present context. Firstly, as a treaty, it would engage the responsibility of all government departments and state institutions, and secondly, the reasons given for Ireland's refusal to even sign this Convention are instructive

By signing a treaty, Ireland is not legally bound by its provisions, but merely indicating its commitment to ratifying that treaty at some point in the future, when Irish law and policy is broadly in conformity with its provisions. Ireland has signed many treaties decades before it proceeded to ratification. The Government has said that it has no intention at present to sign the UN Migrant Workers' Convention, and its stated reasons for this decision provide an insight into the government's true commitment to equality and human rights.

"The IHRC has consistently called for Ireland to ratify the UN International Convention on the Rights of All Migrant Workers and Members of their Families and believes Ireland should press for other EU member states to do likewise. In addition Ireland should ratify the European Convention on the Legal Status of Migrant Workers, and the three ILO Conventions which explicitly deal with the rights of migrant workers. Pending ratification of these conventions, the Government should endeavour to ensure that all new legislation affecting the position of migrant workers should conform as closely as possible to the provisions of the various conventions so as to ensure the observance of best practice and facilitate their early ratification."

Submission of the Irish Human Rights Commission to UN CERD (2005)

“Sometimes systems are not designed to exclude people, but this is the outcome.”

“Some, because they have their stereotypes. They have fixed ideas about you and it doesn't change.”

Participants in Vision 21 consultation

The discussion document published by the Department of Justice, Equality and Law Reform in April 2005, *Immigration and Residence in Ireland*, detailing proposals for an Immigration and Residence Bill, bases this refusal inter alia on the following three grounds: the perceived logistical difficulties that ratification would present in terms of the consequent changes that would have to be made to a wide range of existing legislation, including legislation addressing employment, social welfare provision, education, taxation and electoral law; the Government's denial of the universal recognition of this Convention as a standard for the protection of the human rights of migrant workers; and its contention that the rights of migrant workers and their families are already comprehensively protected under existing national legislation and under the Irish Constitution. On point two, the Government is right that very few nations have ratified this treaty, and those that have are in the 'developing world', and therefore tend to be countries that send rather than receive migrant workers. Not a single EU member state has ratified the treaty, and Ireland's refusal to be the first indicates either a tacit EU common position on this issue, or a 'follow-the-leader' attitude by Ireland. If all treaties were only ratified by states where a substantial threshold of support had been reached, no Conventions would ever have even come into force. The Convention has received the number of ratifications necessary for it has come into force, and hence it is, by definition, a universally recognised human rights standard. That this treaty has been marginalised by EU countries - even though their demand for migrant labour continues to rise as their birth rates decline, and exploitation of migrant workers is a problem in all member states - is evidence more of states ignoring exploitation of migrant workers than it is of any flaw in the legitimacy of the Convention.

In addition to these three reasons, the discussion document offers a fourth: the rights of migrant workers and their families are addressed by Ireland's commitments under international human rights instruments to which the State is already a party, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In this latter context, the government is quite correct.

The Convention does no more than consolidate existing human rights obligations as they pertain to migrant workers, by "reaffirming and establishing basic norms in a comprehensive convention". Yet this is also the case with other treaties addressing discrimination against specified marginalized groups, that Ireland has signed and ratified. The ICERD Convention itself, for instance, does no more than distil the rights contained in the ICCPR and ICESCR into one treaty tailored to the needs of one discriminated against group. The same is true of the UN Convention on the Rights of the Child, and the UN Convention on the Elimination of All Forms of Discrimination Against Women.

The discussion document suggests a fifth reason: that the required legislative changes would "have implications for our relations with our EU partners, none of whom has signed or ratified the convention, and possibly for the operation of the common travel area between Ireland and the UK". It is not apparent that ratification of this Convention could negatively impact on these



Turkish GAMA workers show their handwritten payslips at a press conference in Liberty Hall, Dublin, May 2005

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areas. So the question remains to be answered: why is there such official resistance to Ireland's giving a commitment to ratifying the Migrant Workers' Convention?

Logistical difficulties in amending legislation cannot justify this refusal to recognise the human rights of migrants. While it is reasonable that Government would wish to ensure that national laws are in compliance with the provision of a treaty before ratifying it, this Bill offers the opportunity to ensure such domestic compliance. The identification in the document of the range of laws that would have to be amended is a stark admission of just how widely migrant workers and their families are not adequately protected. However, the Government's apparent intention not to rectify this situation, can only be interpreted as a regrettable decision to allow immigration law, and other national laws as they pertain to migrant workers, to remain out of step with international human rights norms for the foreseeable future.

Moreover, there is widespread demand in Ireland for its ratification – not alone by a broad range of Irish NGOs and trade unions, but also by the former UN High Commissioner for Human Rights, Mary Robinson, and by the Irish Human Rights Commission. The Government has also been urged by the UN CERD and CEDAW Committees to ratify this Convention if it is to fully comply with those treaties.

- **Recommendation:** The Government should immediately sign the 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families, and promptly proceed to ratification when Irish law is in compliance with its provisions. Notwithstanding official resistance to its ratification, for which there is no convincing reason, the Immigration and Residence Bill should refer explicitly to the Convention as the benchmark, in addition to other relevant international and European human rights standards.

“[T]he World Conference against Racism ... [u]rges those States that have not yet done so to consider signing and ratifying or acceding to the ... International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990”

Durban Declaration and Programme of Action, 2001

Footnotes

275. The views expressed in that report are those of the author, and do not necessarily represent the views of the Equality Authority.
276. Durban Declaration and Programme of Action, The World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance took place in Durban from 31 Aug.-Sept.2001, at p. 39, para. 99
277. Department of Justice, Equality and Law Reform, *Planning for Diversity: The National Action Plan against Racism* (2005), at p. 27: "The emphasis throughout the Plan is on developing reasonable and common sense measures to accommodate diversity In Ireland". It is important to note that when the Department of Justice, Equality and Law Reform was questioned on the appropriateness of reasonable accommodation measures as a tool for combating institutional racism, its reply which it made in writing indicated that it understood the question to be about affordable housing, in spite of the emphasis on Reasonable Accommodation within the plan.
278. Equal Status Act 2000 and 2004, number 8 of 2000 and number 24 of 2004, at section 4 (1), "For the purposes of this act, discrimination includes a refusal or failure to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service" , Employment Equality Act 1998 and 2004, number 21 of 1998 and number 24 of 2004, at section 16 (3)(b): "An employer shall do all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment of facilities to which paragraph (a) relates".
279. However, as the Equality Authority has been keen to point out, there have been some interesting developments in the area of reasonable accommodation. In 2004, the Labour Court found against a company in a case concerning the unfair dismissal of a non-citizens worker. It found that the company had not taken sufficient measures in order to ensure that the employee was aware of their employment rights and disciplinary procedures. See the Labour Court Case EED048 Campbell Catering Ltd. (MSS) – and Aderonke Rasaq (Equality Authority): "Special measures may be necessary in the case of non-national workers to ensure that this obligation is fulfilled and that the accused worker fully appreciates the gravity of the situation and is given appropriate facilitates and guidance in making a defence. In such cases, applying the same procedural standards to a non-national workers as would be applied to an Irish national could amount to the application of the same rules to different situations and could in itself amount to discrimination". See also Equality Authority, 05.09.2004, "Non-National Dismissed because of Alleged Theft of Bananas – Labour Court Points to Positive Duties on Employers".
280. See for example Irish Refugee Council, 27.01.2005, "National Action Plan against Racism is seriously undermined by other policies of the State".
281. Irish Refugee Council (2001), *Policy Recommendations on Regional Reception of Asylum Seekers in Ireland* at p. 3. In 2001 the Irish Refugee Council recommended: "All policies introduced by the Government should be poverty-proofed – at both design and review stage – as a matter of urgency in line with government commitments in the Programme for Prosperity and Fairness [The Social Partnership Agreement at the time]".
282. Department of the Taoiseach, *Sustaining Progress – Social Partnership Agreement 2003-2005*
283. Informed by human rights-based approaches to development, Amnesty International (Irish Section) commissioned the International Human Rights Network to provide a framework document that would outline the internationally agreed core minimum principles for human rights based approaches, and examine their application and utility in an Irish context. The report published in 2005 is entitled *Our Rights, Our Future*.
284. *Our Rights, Our Future*, AI Et IHRN (2005).

4 EXAMINATION OF KEY GOVERNMENT DEPARTMENTS

Following the criteria set down in section I of this report for identifying and tackling racism at the level of the State and its institutions, this section sets out to examine whether the government departments under review take adequate account of diversity in their drafting and implementation of policy and practice as both employers and service providers. In addition to investigating whether particular departments' policies or practices have a direct or indirect disproportionate negative impact on people from ethnic minority groups, the existence and effectiveness of human rights and anti-racism strategies within these departments shall be discussed and evaluated following on from the positive obligations entailed in the duty not to discriminate on the basis of 'race', discussed in part I. In addition to looking at institutional racism from the point of view of policy and practice, government departments' records on human rights and the impact or result of policies and practices on people from minority ethnic groups shall be examined, in recognition of the nature of institutional racism, discussed in section I.

As noted earlier, while each of the four government departments under review provided representatives for interview, in general, there was a sense on the part of the research team that some of the government departments were reluctant to be interviewed on the subject. Also, the research team found that, in some cases, the appropriateness of nominations by Ministers of officials to be interviewed on behalf of the department was questionable. Despite the best efforts of the research team, the team felt they were not given access to the most appropriate officials. For instance, the Department of Health and Children provided just a representative from the Health Services Employers Agency. In some cases, the process for departments' selecting their interview nominees was protracted. Time constraint was frequently cited as a reason for desiring not to grant an interview. While conscious that government departments are complex organisations, and advance information is needed to ensure that relevant department officials attend such meetings, the research team found that it experienced difficulty in obtaining interviews and an unusual amount of information was requested in advance of interviews, indicating a perceived reluctance to engage with the subject matter which the team has attributed to the stigma attached to racism.

“Let’s look at government departments. How many foreigners or people with dual citizenship are working there? I don’t even mean at a high level, just ordinary clerks. There may be some, but I don’t think so. It is the exception.”

Participant in Vision 21 consultation



4.1 The Department of Justice, Equality and Law Reform

The mission statement of the Department of Justice, Equality and Law Reform states:

To maintain and enhance community security and equality through the development of a range of policies and high quality services which underpin: the protection and assertion of human rights and fundamental freedoms consistent with the common good; the security of the State; an effective and balanced approach to tackling crime; and progress towards the elimination of discrimination and the promotion of equal opportunities and the accommodation of diversity.²⁸⁵

Minister for Justice, Equality and Law Reform, Michael McDowell TD, at the launch of a new identity and logo for the National Action Plan Against Racism on 10 October 2005 in Dublin
© Gareth Chaney/Photocall Ireland

“Government research on racist attitudes in Ireland and the effectiveness of Government policies in combating racial discrimination is ... lacking. [...] There is a need for proper co-ordination of research to ensure collection of baseline social and economic data on Black and minority ethnic groups, data on systems, organisations and structures impacting on equality, data on changing social attitudes, and data on the development of resources within Black and minority ethnic communities.”

NGO Alliance Shadow Report

In Response to the Irish Government’s First National Report to CERD (2004)

This report’s approach to the Department of Justice, Equality and Law Reform (DJELR) is two-fold in recognition of its pivotal importance in ensuring the effective enjoyment of human rights and particularly, the right to freedom from racial discrimination at national level. In addition to being responsible for combating racism at the level of the State and its institutions in security, for which it has sole responsibility, it is charged with cross-departmental human rights and anti-racism measures.²⁸⁶ Given the dual responsibility of the DJELR, this report’s evaluation of the adequacy of Ireland’s anti-racism legislative framework (see Section 2), which comes within the Equality remit of the Department, is relevant. In this section, it shall investigate measures aimed at combating racism at the level of the State and its institutions within the police force, the judicial system, the prison system and procedures governing immigration, asylum and citizenship, all of which come within the Justice remit of the Department.

While the Department was able to provide lengthy responses on issues raised in the interview with the research team, it is important to note that the provision of written questions was a pre-condition for any interview taking place. Furthermore, in an interview which took place one month after the provision of written questions by the Irish Centre for Human Rights,²⁸⁷ the Department was unwilling to point to any specific issues of concern in respect of institutional racism, preferring to emphasise its recent constructive dialogue with the UN CERD Committee.²⁸⁸ Moreover, in spite of the Department’s cross-departmental responsibility for equality, the Minister of State with special responsibility for equality felt unable to comment on the performance of other government departments in relation to anti-racism.²⁸⁹

4.1.1 Data on Racist Incidents and Outcomes

The National Action Plan against Racism proposes the establishment of an Expert Committee on Racist Incidents, whose functions shall include reviewing Ireland’s current legislative framework for dealing with racist incidents and considering the added-value of the introduction of “crimes of hate” as an aggravated offence. However, the Department has tended to minimise the extent of the problem of racism in Ireland. This attitude is evident in its tacit suggestion that a decrease in racist incidents reported to the Gardai is evidence of a decreasing problem. Shortly after the NCCRI produced statistics indicating a rise in the number of racist incidents reported to it around the time of the citizenship referendum,²⁹⁰ the Minister for Justice, Equality and Law Reform welcomed statistics that showed a decrease in serious racial incidents being reported to the Gardai in an over-lapping time period.²⁹¹ The Department’s analysis of these statistics included no reference to conflicting findings by the NCCRI or consideration of the possibility that the decline in racist crime being reported to the Gardai might be attributed to the under-reporting of racist crime as a result of lack of confidence in the Gardai, either because of racism within the Gardai or the unavailability of satisfactory remedies to victims of racial discrimination, in spite of the fact that Amnesty International’s 2001 Report, *Racism in Ireland: The Views of Black and Ethnic Minorities* had publicly voiced the concerns of people from ethnic minority groups in this respect.²⁹² In other contexts where it is known that low reporting of a crime does not equate to low prevalence – domestic violence offences or rape, for example – the Department has not issued similar unconditional statements upon publication of Garda statistics.

The Declaration and Programme of Action adopted at the 2001 World Conference Against Racism urged governments “to establish regular monitoring of acts of racism, racial discrimination, xenophobia and related intolerance in the public and private sectors, including those committed by law enforcement officials”. It is noteworthy that studies into the

experience of racism have been generated by the nongovernmental sector, and not by the Department.

- **Recommendation:** The effective enjoyment of the right to freedom from racial discrimination does not constitute a sufficiently high priority within the Department's overall policy, programmes and practice. The Department should give the issue significantly more attention. Moreover, before racism can be tackled, the Department must acknowledge the extent of the problem, both in terms of racist incidents, including violence and abuse, and racism at the level of the State and its institutions. While a lot of good work has been done in this area, the Department must seek to identify the extent and the gravity of the problem in order for it to be tackled effectively by conducting appropriate research.

4.1.2 Effective Remedies:

Sanctions: As discussed above, the absence of judicial guidelines in treating racism as an aggravating factor and the high threshold of proof required in cases under the Prohibition of Incitement to Hatred Act, 1989 constitute legislative impediments to an effective remedy in cases of racial discrimination.

- **Recommendation:** The Department must strengthen Ireland's anti-racism legislative framework in line with the recommendation of the UN CERD Committee. In accordance with the examples of good practice set out in Part I, section 3.6 of this report, any legislative amendments must be accompanied by training for the Gardaí, legal professionals and judges in order to ensure the effectiveness of the law.²⁹³

Compensation: The continued cap on compensation in Equality legislation does not take adequate account of the impact of racial discrimination²⁹⁴ on the victim of discrimination, which raises questions about its compliance with article 6 of ICERD.²⁹⁵

- **Recommendation:** In order to comply with article 6 of ICERD, the cap on compensation in equality-related cases should be removed.

Access to the Law: The difficulties encountered by people from minority ethnic groups in accessing the law, particularly as a result of resource and time constraints; also raise questions about racism at the level of the State and its institutions. The 2-week timeframe allowed for the "judicial review of administrative decisions made pursuant to legislation governing immigration and asylum",²⁹⁶ which includes the time it takes to find a solicitor who is willing to represent him/her, greatly impedes an individual's ability to prepare their case.²⁹⁷ When juxtaposed with the 6 months allowed for the judicial review of other policy decisions, it cannot be said to meet the principle of proportionality and must be viewed as discriminatory in effect, even though it has been held to be in keeping with the Constitution.²⁹⁸ The UN CERD Committee has also criticised this time limit.²⁹⁹ The limited availability of legal aid for these cases also greatly impedes the individual's ability to mount an effective challenge in court.³⁰⁰ The ineligibility for cases concerning human rights, such as cases under the European Convention on Human Rights Act, 2003 and residency on the basis of an 'Irish-born child', is particularly worrying as this restriction has a disproportionate impact on people from migrant groups.³⁰¹

- **Recommendation:** Procedures governing the allocation of legal aid should be equality-proofed in order to ensure that the restrictions on legal aid do not have a

"Research should form part of an overall strategy that is what appears to be missing in Ireland at present. There is no government plan, this is the bottom-line."

A Guide to Published Research on Refugees, Asylum-Seekers and Immigrants in Ireland
Cotter, Integrating Ireland (2004)

disproportionate negative impact on people from minority ethnic groups. Moreover, special measures should be taken in order to ensure equal access to the courts for people from minority ethnic groups.

In addition to the difficulties encountered by individuals in accessing the courts, the "lack of a comprehensive procedure that would tackle multi-party actions in a consistent, effective and expeditious manner"³⁰² does not allow for effective remedies in cases of patterns of discrimination. While a provision exists for representative action,³⁰³ which the Law Reform Commission has termed "a rudimentary form of class action",³⁰⁴ a number of limitations govern its application, which makes it generally unsuitable for cases of racial discrimination.³⁰⁵ Aside from procedural limitations, the prohibition on the allocation of legal aid for such cases effectively discounts it as an option for marginalized groups.³⁰⁶ In this context, the State's failure to transpose article 7 of the European Union Directive on 'Race', which would have allowed for interested parties to act in order to take cases on behalf of groups experiencing racial discrimination is particularly regrettable and raises questions about the State's willingness to provide effective remedies for victims of racial discrimination.³⁰⁷

- **Recommendation:** In light of article 7 of the European Directive on 'Race', the State should review procedures which determine who may take a case under Irish law. Furthermore, the prohibition on legal aid for representative cases should be removed.

As is evident from the previous section's discussion on the relationship between the lack of confidence among people from minority ethnic communities in the Gardaí and under-reporting of racist incidents, the attitudes of law enforcement officials and the judiciary may constitute a major impediment to victims of racial discrimination in accessing effective remedies.³⁰⁸ The CERD Committee recommended that the State "intensify its sensitisation efforts among law enforcement officials".³⁰⁹

4.1.3 The Criminal Justice System

While an individual cannot make an institution racist, if there are not adequate safeguards in place, an individual can let his or her prejudice get in the way of impartial judgement. In particular, the relationship between shared associations of colour and criminality and institutional racism in the form of the systematic targeting of people from ethnic minority groups as suspects of crime has been well established. Moreover, as the Stephen Lawrence Inquiry has unequivocally shown, institutional racism may impede the enforcement of anti-racism legislation. Systematic human rights and anti-racism training are essential in order to ensure the effective and impartial enforcement of legislation, whether anti-racist or otherwise. As outlined in part I section 3.6, anti-racism training should focus on providing law enforcement officials with both a good working knowledge of the State's obligations under international law and an awareness of the impact of racial discrimination on victims.³¹²

(A) An Garda Síochána

The Gardaí constitute an example of good practice in anti-racism mainstreaming with few resources.³¹³ They have mainstreamed anti-racism by training a few people externally, who have in turn been given responsibility for mainstreaming anti-racism within the organisation. However, certain incidents and practices raise questions about the effectiveness of training. These include the Gardaí's response to racist incidents,³¹⁴ the lack of awareness surrounding the role of ethnic liaison officers within the force³¹⁵ and the carrying out of certain operations

which have significantly undermined relations between the Gardaí and minority ethnic communities. Examples of bad practice include the Garda handling of protests by the Traveller Community at Dunsink Lane³¹⁶, and Operation Hyphen, which was aimed at rounding up illegal immigrants.³¹⁷ An example of good practice in acknowledging and identifying institutional racism is provided by An Garda Síochána's commissioning and publishing the Ionann Report, an independent audit of compliance of An Garda's policies and strategies with international human rights standards.³¹⁸ The openness with which the Garda Commissioner published this report, which documents Garda abuse of powers, ill-treatment, institutional racism, and unaccountability, marks a significant step forward towards a more open and accountable police service in Ireland. Perhaps the strongest theme that emerged across all elements of the audit, was a lack of respect for diversity and non-discrimination. Institutional racism was highlighted as a key concern for the organisation, and anti-racism training was identified as a priority: "There is an urgent need for diversity and 'race' relations training which will not only impart knowledge of different cultures and faiths but also tackle the question of institutional discrimination." The Action Plan published by the Commissioner on foot of the Ionann report, introduces a measure of accountability and openness by setting target dates and identifying those with responsibility for delivery. This model should be a standard-setting one, and all other state institutions, particularly those most likely to have negative encounters with minority ethnic groups, should be similarly evaluated. Also welcome is the priority given by the Gardaí to promoting "Ethnic and Cultural Diversity" within the Garda Policing Plan 2005.³¹⁹

The DJELR in interview acknowledged the need "to respond effectively to the problem of institutional racism"³²⁰ within the Gardaí. The allocation of greater resources to the Garda Racial and Intercultural Office and Human Rights Office promised in the National Action Plan against Racism³²¹ is particularly welcomed. While the DJELR's 2005 effort to secure targeted recruitment of people from minority ethnic groups to the Gardaí is also welcome³²², beyond amending the Irish language requirement, an holistic approach to such recruitment has not yet been adopted, so that hidden barriers have not yet been identified and addressed, but it is anticipated that this will follow.

These recent actions are welcome, and should be underpinned by the introduction of an anti-racist code of practice, which would include protection against racism for Gardaí from minority ethnic communities in the workplace.³²³ While the Garda Declaration of Professional Values and Ethical Standards is not enforceable and does not contain adequate safeguard against racism, a new Code of Ethics is provided for under the Garda Síochána Act, 2005. An independent Ombudsman Commission has also been provided for under the 2005 Act,³²⁴ and it is hoped that this body will afford adequate protection against racism at institutional or State level and inspire confidence on the part of people from minority ethnic groups.³²⁵

- **Recommendation:** The Department should ensure implementation of the recommendation by the CERD Committee that the State establish "an effective monitoring mechanism to carry out investigations into allegations of racially motivated police misconduct."³²⁶
- **Recommendation:** The Garda Code of Ethics under preparation should give full effect to human rights standards, and should be enforceable.

(B) The Judiciary

A lack of accountability for personal racism within the judiciary also creates significant

"[E]ven though the system of justice may be regarded as impartial and not affected by racism, racial discrimination or xenophobia, when racial or ethnic discrimination does exist in the administration and functioning of the system of justice, it constitutes a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect [N]o country is free from racial discrimination in the administration and functioning of the criminal justice system, regardless of the type of law applied or the judicial system in force...."

UN CERD Committee General Recommendation 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal justice System (adopted on 17th August 2005)

“States parties should ... develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc.”

UN CERD Committee
General
Recommendation 31 on
the Prevention of Racial
Discrimination in the
Administration and
Functioning of the
Criminal justice System
(adopted on 17th August
2005)

potential for institutional racism. This problem stems from deep-rooted problems in the courts, such as a lack of transparency and data. The fact that District Court judges are not required to provide written reasons for imposing a particular sentences does not offer sufficient safeguards against racism.³²⁷ The absence of Court reporting in the District Court system constitutes a significant obstacle to the collection of data on ethnicity and sentencing.³²⁸ While the Irish Traveller Movement has established the Traveller Legal Unit, providing a recording system for cases concerning the Traveller Community as both victims of crime and criminal suspects,³²⁹ and Residents against Racism's court observers have brought racism in judicial settings to the attention of the public at large,³³⁰ it is not the job of NGOs to compensate for State inaction, nor can the actions of NGOs ever be as systematic as actions undertaken by the State.³³¹

The need for a systematic approach to human rights and anti-racism within the judiciary has been highlighted by a number of high-profile racist remarks made by judges recently.³³² The State's failure to sanction the judges in the above-mentioned cases raises questions about its commitment to ensuring the right to freedom from racial discrimination, and restoring minority ethnic groups' confidence in the impartiality of the judicial system.

- **Recommendation:** The judiciary should undergo a human rights audit, and a human rights action plan should be devised, similar to that undertaken by An Garda Síochána. All members of the judiciary should periodically undertake human rights and anti-racism training on a systematic basis, and the effectiveness of this training should be monitored and evaluated.

(C) The Prison Service

Within the judicial administrative system, significant problems exist concerning data and ethnicity.³³³ According to official figures from the Irish Prison Service, a total of 1,804 persons (20.4%) committed to prison in 2004 indicated that they were "non-nationals", of whom 946 (11%) were detained under immigration laws.³³⁴ The latter figure was down almost 50% on the 2003 figure of 1,852 (25.6%),³³⁵ "mostly because of the reduction in the number of short term immigration detainees consequent on the fall in the numbers of persons arriving in the state seeking asylum".³³⁶ However, the state's practice of detaining rejected asylum seekers and undocumented migrants awaiting deportation in prisons, rather than in special facilities, has been criticised by the CERD Committee.³³⁷ The inappropriateness of prisons for detaining persons neither suspected nor convicted of a criminal offence, has also been pointed out by the European Committee for the Prevention of Torture (ECPT).³³⁸ A 2005 report published by the Immigrant Council of Ireland, Irish Refugee Council, and Irish Penal Reform Trust, found:

"Irish law and practice do not adequately protect the rights of people refused permission to land and people detained pending deportation. Such persons are not being informed in writing, in a language that they understand, of their right to challenge the legality of their detention and/or the validity of a decision to remove them from the State. Moreover, the law does not formally recognise their rights to inform a person of their choice of their situation, to have access to a lawyer and to have access to medical care. Nor are such people being systematically provided with written information in a language that they understand in order to explain the legal procedures that apply to them and to outline their rights."³³⁹

The report found that, in 2004, some two thirds of those detained in prison for immigration-related reasons were imprisoned for periods of longer than 51 days. It concluded that Cloverhill

Prison and the Dóchas Centre, in which two prisons over 90% of persons detained for immigration-related reasons in Ireland are held, do not provide an appropriate environment in which to hold immigration detainees. It recommended that "the practice of holding immigration detainees in prisons in Ireland to be brought to an end"; and "[i]n those cases where it is deemed necessary to deprive persons of their liberty for an extended period under immigration legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel".

- **Recommendation:** The Department should detain migrants only where necessary, and should establish special detention facilities offering material conditions and regimes more appropriate to the status of immigration-related detainees.

No published figures exist concerning the percentage of Irish citizens from minority ethnic groups within the prison system, thereby excluding proper analysis of the possibility of over-representation of people from minority ethnic communities within the prison system. However, there is known to be a disproportionate number of members of the Traveller community in Irish prisons compared with the non-Traveller prison population. A 2002 study of admissions to the Central Mental Hospital from prisons found "a gross over-representation of Travellers in forensic psychiatry admissions", reflecting "the excess of Travellers amongst prison committals". It observed: "These rates suggest that a very high proportion of all Travellers will be imprisoned at some time during their life." In terms of the impact of this finding, the study suggested:

This 'normalisation' of the experience of imprisonment exposes a high proportion of all Travellers to the adverse health and lifestyle behaviours prevalent in prisons. Prison populations are at great risk of developing opiate and other drug dependence disorders, with associated problems. In a more general way, the normalisation of imprisonment is likely to have adverse effects on the expectations and aspirations of children and adults. It adds also to the stigma attached to Travellers as a group.³⁴⁰

This study suggested that lessons can be learnt from other countries that have taken steps to address the situation of ethnic minorities in their prison populations: "A practical consequence would be to use contact with the criminal justice system as a means of engaging individuals in culture-specific programmes for health promotion, examples of which can be found in other jurisdictions."

Of non-Irish citizen detainees, some 115 different countries of origin were identified, representing a significant challenge for prison staff in dealing with cultural diversity, and racism against and between detainees. In 2001, the DJELR commissioned the development and evaluation of a research and training programme on "intercultural awareness, communication and racial equality" in Wheatfield prison, "with a view to subsequently informing broader policy, practice and procedure in Irish prisons".³⁴¹ The evaluation found that participants (staff and offenders) strongly supported the continuation and expansion of the programme; and it recommended that training be mainstreamed and integrated into induction and in-service training for offenders and staff. It also recommended a prison policy statement, including a code of practice. Details of induction and in-service training for prison staff Irish Prison Service Annual Report for 2004 contain no reference to such a programme, or of human rights training in a more general sense, indicating that any such training is, at best, limited.

- **Recommendation:** The Department should ensure that training in anti-racism and

Cloverhill Prison accommodates immigration detainees in overcrowded conditions – three to an 11m² cell – together with people suspected of criminal offences. They are locked in their cells for more than seventeen hours a day and significant restrictions – including closed visiting arrangements – are placed on their contacts with the outside world.

Although conditions at the Dóchas Centre are better in certain respects (e.g. open visits and more time unlocked), immigration detainees held there appear to be bearing the brunt of the establishment's overcrowding problems. Indeed, two of them were found to be sleeping on mattresses placed directly on the floor of an 8m² office. Moreover, immigration detainees at the Dóchas Centre are held together with people on remand and convicted prisoners.

Immigration-related detention in Ireland: A research report for the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland
Mark Kelly, Human Rights Consultants, November 2005.

“Immigration policy has been haphazard and unplanned. It leaves migrant workers vulnerable to unscrupulous employers, makes no proper provision for such workers to be joined by their families and makes no serious effort to integrate them into Irish society.”

Submission of the Irish Human Rights Commission to the UN CERD Committee (2005)

human rights forms a core component of pre- and in-service training for all prison staff.

The evaluation also found that the percentage of offenders who said they has witnessed someone being treated unfairly rose from 48% pre-training to 80% post-training, with “the largest increase of 35% being in physical treatment”. However, it found an “apparent unwillingness of offenders to report incidents” - after training, 91% of offenders said they knew how to identify a “culturally related incident” but 71% said they would not report such an incident. According to the evaluation report: “This is a serious issue and would merit further investigation and action.” It also concluded that “lack of knowledge of how to report is not the reason why offenders are unwilling to report culturally related incidents”.

While an Inspector of Prisons and Places of Detention was appointed in April 2002, the office lacks statutory powers to receive and act on complaints by prisoners. The UN Human Rights Committee, in its 2000 concluding observations on Ireland’s second periodic report to it, advised the Irish Government that the Independent Prison Authority, the establishment of which was then proposed, should have the power and resources to deal with complaints of abuse made by prisoners.³⁴² The ECPT has repeatedly identified the absence of an independent statutory authority with powers to receive, investigate and take action on prisoners’ complaints as one of the critical deficiencies in Ireland’s safeguarding the human rights of persons in detention.³⁴³ Neither is the Inspector vested with the necessary powers, duties and resources to meet the requirements of an effective inspection procedure, also in breach of Ireland human’s rights obligations.

- **Recommendation:** The inspection of prisons should be established on a statutory basis as a matter of the highest priority, and, in the interim, the Inspector of Prisons and Places of Detention should be accorded all necessary assistance and resources. Legislative provision should urgently be made for an independent and effective statutory complaints mechanism, either through empowering the statutory inspectorate, or by constituting a separate statutory complaints authority such as a Prison Ombudsman.

4.1.4 The Asylum and Immigration Systems

(A) Immigration

The emphasis on individual discretion within the immigration system, and a lack of transparency and accountability in how decisions are made, both at the port of entry and in the processing of applications relating to immigration matters, leaves this system open to discriminatory practices. Presently, appeals against immigration decisions are lodged to the immigration division of the DJELR, i.e. the same body that makes the decisions in the first place.³⁴⁴ While it is possible to apply for judicial review of decisions, the difficulties of engaging a private solicitor to take on such a case, in conjunction with the uncertainty of a successful outcome militate against this option for many individuals and families.

- **Recommendation:** The Government should comply with the recommendation of the CERD Committee that an effective immigration appeals procedure be established in the proposed Immigration and Residence Bill.³⁴⁵ This appeal process should be entirely separate from the process where the initial application was evaluated.

Significant potential for institutional racism exists as a result of the discretionary powers given to immigration officers under the Immigration Act, 2004. Section 3.3 of the Act allows immigration officers to detain or examine any person they reasonably believe is a non-citizen,³⁴⁶ with the consequent risk of racial profiling, i.e. selecting individuals for questioning solely on the basis of their appearance. Although the NCCRI called for anti-racism training for immigration officers before the Immigration Bill became law,³⁴⁷ it is unclear as to whether these officials have undergone any human rights and anti-racism training beyond their Garda training. However, where the government's stated policy is one of deterring illegal immigration, it is a justifiable presumption that training alone would be wholly ineffective. Independent monitoring of decision-making is essential. The CERD Committee noted "the reported occurrence of instances of discriminatory treatment against foreign nationals entering Ireland during security checks at airports", and advised the Irish Government to "review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner".³⁴⁸

- **Recommendation:** The Department should provide for independent systematic monitoring of the practice and decisions of immigration officers at points of entry to the state, to ensure they are complying with their human rights obligations in respect both of refoulement and of racial discrimination.

(B) Asylum

A common theme for asylum seeker participants in the Vision 21 consultation was the difficulty caused when passports are taken and participants were issued with an "ID card". This card appears on the front like a normal form of identification, but on the reverse side in large letters it states 'This is not an Identity card'. This has caused innumerable problems for asylum seeking participants in being able to comply with official processes in a wide range of institutions, the most significant for participants, being banks and the motor taxation office. One participant, when trying to get his drivers licence, had difficulties because he did not have the required form of identification. After being repeatedly turned down and told that his license could not be processed he took all his documentation to another county council who processed this for him.

The establishment of a Refugee Advisory Board was provided for under the Refugee Act, 1996, which would have had significant potential to act as a safeguard against racism within the applications process. This has not been implemented, and the Minister for Justice, Equality and Law Reform is not convinced that the present legislative provision provides a suitable model in which to move forward, hence an alternative framework is now being considered.³⁴⁹

- **Recommendation:** The State should establish an Independent Refugee Advisory Board

(C) The Direct Provision System

The Direct Provision scheme began as a pilot scheme in November 1999³⁵⁰, alongside the policy of Regional Dispersal³⁵¹ and was introduced throughout the country by administrative circular, rather than by legislation in April 2000.³⁵² Under the system of Regional Dispersal, asylum seekers have been routinely located outside of Dublin since this date. A number of serious concerns exist regarding the Direct Provision system and racism at the level of the State and its institutions. 5

"The National Consultative Committee on Racism and Interculturalism (NCCRI) said it had received 'consistent reports' of prejudice and rudeness by some garda immigration officers towards people from ethnic minorities. NCCRI boss Philip Watt said: 'While we accept security is of paramount importance it does seem to be the case that some people have been targeted, without any good reason, simply on the prejudice of the immigration officer.' ... Mr Watt said while most immigration officers were doing a good job there seemed to be a small number who carried out their work in an insensitive way. He said the NCCRI was not happy with the 'robustness' of training to garda immigration officers."

*"Immigration staff 'make every effort with minorities'"
Irish Examiner
04.02.2006*

'The food ... It is chicken, chicken, chicken and more and more chips. This is very different for me.'

'Everyday, they give us food like dogs.'

'It is almost like the hostels are designed to discourage people from coming here.'

Asylum seeker participants in Vision 21 consultation

Some of the asylum seeker participants in the Vision 21 consultation spoke of the quality of the hostels they stayed in. For women, in particular, concerns were expressed on the way they were allocated to rooms with much younger women. In their view, they should have had more say in where they were assigned to sleep as sharing a dormitory with younger women was inappropriate for women who were much older. One participant felt that the way the hostel was run did not take account of her cultural and dietary needs. It was generally agreed that the food prepared was inadequate and participants questioned whether it provided any nutritional value. There was also a common sense of feeling powerless. Many participants felt that the managers of hostels had power and had the final say in their everyday lives. The lack of choice and control, even in the preparation of their food, reinforced this sense of powerlessness. When asked if they had made any complaint while in the hostel to a state body, no one had done so because they did not know where to go and were afraid that they would not be listened to. There was a general sense among participants that they should feel grateful for what they are being given. Some participants reported overcrowding in their accommodation and difficulties in dealing with the management. One participant believed that if she complained to the manager, this might result in problems for her application for asylum in the future. Although an erroneous belief, when the participant questioned whether the manager could interfere in the process of application she was informed by other residents of the hostel that she would be better not to complain.

Firstly, the suspension of asylum seekers' right to work during the asylum process³⁵³ coupled with the level of welfare payments allocated to asylum seekers under the scheme systematically marginalises asylum seekers from Irish society. Like Irish citizens with a housing need, asylum seekers are provided with hostel-type accommodation³⁵⁴ with full-board.³⁵⁵ However, the supplementary social welfare benefit they receive amounts to approximately one third of the levels of payment, which an Irish citizen in a similar situation receives.³⁵⁶ Whereas

homeless Irish citizens receive approximately €60, asylum seekers receive €19.10.³⁵⁷ The location of hostels in isolated locations³⁵⁸ and the poor quality of food available in hostels means that asylum seekers end up spending this meagre allowance on transport and food in an attempt to meet their basic needs.³⁵⁹ This allowance fails to consider the exceptionally high cost of living in Ireland, as well as the importance of cash in order to be able to interact with the mainstream community. Thus the provision in the system where asylum seekers have no money to spend, acts as a barrier to their integration.³⁶⁰ The fact that this allowance has remained static since it was introduced, in spite of the high rate of inflation of the Irish economy and the fact that most other benefit payments have been increased since this date, further compounds the economic and social gap between asylum seekers and the mainstream community.³⁶¹



Comhlámh protest outside the Dáil over the treatment of asylum seekers in Ireland, December 2001

© Leon Farrell/Photocall Ireland

The compliance of the supplementary welfare allowance accorded to asylum seekers under the direct provision system with core minimum standards under the ICESCR is extremely doubtful, given the fact that it is much lower than that received by Irish citizens and residents on full welfare payments, many of whom have been found to be living below the poverty line.³⁶² Following the Human Rights Committee's findings in the case of *Gueye v. France*³⁶³ regarding pension payments, the permissibility of such a distinction under international human rights

law is not clear, especially given the findings by FLAC that this system was "based on a policy of deterrence rather than any attempt to address the needs of as a class or individuals."³⁶⁴ Indeed, it has been described as a "punitive system", which is designed to deter individuals from seeking asylum in Ireland.³⁶⁵

- **Recommendation:** Asylum seekers should be allocated supplementary welfare allowance at the same level as homeless Irish people living in hostels, and the Direct Provision system should be formally poverty-proofed.
- **Recommendation:** Asylum seekers should have the right to work after 6 months.³⁶⁶
- **Recommendation:** The Department should develop a comprehensive integration strategy for asylum seekers, in line with its obligations under article 3 of ICERD, as recommended by the CERD.

The DJELR operates no central programme aimed at the integration of asylum seekers. While the actions of community groups in certain areas constitute examples of good practice in terms of anti-racism and integration, whether an asylum seeker is given the chance to participate in society during the asylum process depends on where they are located under the Direct Provision system.³⁶⁷ In addition to there being no programmes aimed at fostering their participation in mainstream Irish society, asylum seekers receive no official advice on their rights and entitlements other than about the refugee status determination process, contributing to a climate of fear where asylum seekers feel that if they report racist or other incidents, their asylum claim will be negatively affected.³⁶⁸ The NCCRI has engaged in a certain number of human rights training with officials from the Reception and Integration Agency under its training for trainers programme.³⁶⁹ However the effectiveness of such training is questionable when pitched against structures within the Direct Provision system, which are inherently discriminatory in themselves, but also allow for racism on the part of individuals working within the system to go unpunished. The lack of an independent complaints procedure within the Direct Provision system in situations where the accommodation centre resident may have a problem with the Manager, is also indicative of an attitude towards asylum seekers which underscores the entire reception and accommodation system.³⁷⁰

- **Recommendation:** The Department should establish an independent complaints procedure within the reception and accommodation system, and an enforceable code of practice for staff and management of centres.

(D) Appeals

There is a severe lack of transparency in the manner in which the Refugee Appeals Tribunal assesses appeals. With no public record available of proceedings and hence to precedence, solicitors have reported difficulty in preparing cases. In addition there have been reports of racist comments and aggressive tones being used to intimidate clients. There have also been suggestions that some judges on the panel have rarely granted an appeal, and thus there is no legal certainty in the process.³⁷¹

- **Recommendation:** We endorse the findings of the Report into the Refugee Appeals Tribunal – which calls on these procedures to be made public, and we urge the government to provide training facilities for members of the Tribunal.³⁷² The systemic failures to determine the veracity of asylum claims lead to the strong

“Presently, no integration measures at all are foreseen for asylum seekers. ECRI would like to stress the importance of integration measures from the outset of the asylum application process, both for the asylum seekers themselves, who may in the first place spend quite long periods in Ireland while their applications are under consideration, and who may then be granted refugee status or humanitarian permission to remain, but also to increase awareness and understanding among the majority.”

European Commission
against Racism and
Intolerance
Second report on Ireland
Adopted on 22 June
2001 and made public
on 23 April 2002

The Minister for Justice, Equality and Law Reform, Mr McDowell, has described the Equality Authority as 'a ginger group' and said inequality is an incentive in the Irish economy.

The Equality Authority was a 'ginger group as well as a statutory body', he said in an interview with the *Irish Catholic*. [...]

Speaking to *The Irish Times* last night, Mr Crowley said Mr McDowell's comments amounted to 'soundbites from a bigger position', but 'opened up the possibility of a very significant and profound debate on equality in Irish society'.

'McDowell says inequality an incentive in the economy'
Irish Times, 28 May 2004

suggestion that Ireland is failing in its fundamental responsibility vis-à-vis the principle of non-refoulement.

4.1.5 A Department of Equality and Human Rights?

The Department of Justice, Equality and Law Reform has responsibility for drafting, monitoring and reviewing legislation and policy in the area of discrimination and human rights. It is also the central coordinator of all state activities under the National Action Plan Against Racism, and other cross-departmental equality measures. Equality legislation referred to in Section 2.2, the Prohibition of the Incitement to Racial Hatred Act 1989 in Section 2.3, and the ECHR Act in Section 2.4 all come within its remit. While each of these measures is most welcome, the Department itself as a whole has evinced a reluctant and minimalist attitude towards adopting each of these pieces of legislation, and/or enhancing the protections they afford. The ECHR Act was the weakest possible form of incorporating the ECHR, a requirement of the 1998 Belfast Agreement. The state's equality legislation was broadly required under EU law, and efforts on the part of the Equality Authority to have it strengthened have been resisted by the Department, as outlined in Section 2.4. That the Department, in enacting the Equal Status Act, 2004, did not take that opportunity to remedy anomalies within Ireland's equality legislation, and took a minimalist approach to the protections suggested in the EU Race Directive, raises serious questions about the level of its commitment to human rights and anti-racism. These concerns apply more broadly than anti-racism across all areas covered by the Department's equality remit.³⁷³

When asked to discuss any state policies, laws or initiatives that have impacted on them, many of the migrant participants in the Vision 21 consultation referred generally to those of the Department of Justice, Equality and Law Reform, illustrating the key role it is playing in their lives and the importance they attached to decisions that this department makes. These measures included deportation of failed asylum seekers, work entitlements of asylum seekers, residence application process for parents of 'Irish born children' (i.e. in parentheses), the work permits system, and work entitlements of non-EEA migrant students.

The Department's multiple remits and roles, with its overriding concern with its justice agenda, has the consequence that its equality remit is evidently overborne by its justice remit. That the Department appointed a Minister of State with special responsibility for equality issues in 1997³⁷⁴, has not served to resolve the inherent tension between these competing priorities. The office of the Minister of State does not have the ministerial powers, resources and the influence that a seat at the Cabinet table brings, that his office requires in order to be effective, and to wield influence and control over all other government departments encompassed by its equality brief. It is therefore concluded here that there is a fatal tension between the competing roles and interests of the Department as currently constructed, and that its equality brief should be removed and vested in a separate department specifically established with responsibility for equality and human rights issues.

According to the 2000 Equality Authority report, *Building the Picture*, a comprehensive system of equality monitoring should comprise the following: 1. Measures for the effective assessment of current government policy in areas such as employment, training, childcare, education, health, poverty and representation; 2. Development of specific equality guidelines to inform the policy-making process in these areas; 3. Development of structures and systems to enhance the policy-making and implementation process, at central, regional and local level; 4. Integration of specific equality objectives into all areas of economic and social policy; 5.

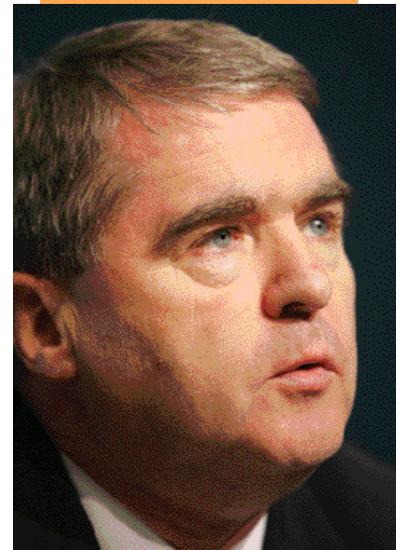
Development of a programme of action based on specific time scales, targets and resourced mechanisms for the realisation of those policy objectives; and 6. Establishment of indicators for monitoring the implementation of policy, assessing objectives and reviewing programmes of action. That little has been developed by the Department on these six fronts, is evidence of its not being in a position to prioritise its equality agenda.

This inherent tension between the separate and competing roles of the Department is particularly troubling when viewed in the context of a controversial comment made by the Minister with cabinet responsibility for equality on the benefits of inequality to Irish society in an interview: "A dynamic liberal economy like ours demands flexibility and inequality in some respects to function".³⁷⁵ That the Minister publicly dismissed the role of the Equality Authority in advocating for improvements in legislative protections against discrimination as that of a "ginger group"³⁷⁶ offers a useful insight into how this Department may view its own equality brief.

The Irish Human Rights Commission has noted, "the Minister for Justice, Equality and Law Reform routinely and comprehensively refers legislative proposals to the Commission".³⁷⁷ However it has commented: "We have asked Government to ensure that other Departments refer legislative proposals which may have human rights implications to us. We have been assured that this will happen, but so far it has not." Since the IHRC does not have the power to compel government departments to do so, this strengthens the suggestion that a Department of Equality might also be vested with overarching government responsibility for human rights issues.

Recommendations to the Department:

- The Department should undertake the measures recommended by the CERD Committee to strengthen Ireland's anti-racism legislative framework.
- Adequate resources, measurable outcomes, and clear timeframes should be allocated in order to ensure that the strategies set down in the National Action Plan against Racism do not remain merely statements of good intent, but become a reality.
- The Department should implement the amendments to Ireland's current equality legislation proposed by the State's expert bodies in the field of human rights and anti-racism. On the whole, there is a need for the Department to afford greater weight to the recommendations made to it by expert bodies, as well as the minority ethnic groups, who are potentially affected by the Department's policies and programmes.
- The Department should implement all aspects of the European Council 'Race' Directive in good faith and in keeping with its international obligations.



Frank Fahey TD, Minister of State with special responsibility for equality issues at the Department of Justice, Equality and Law Reform, at the launch of the Government's National Action Plan Against Racism, on 27 January 2005

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- "(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

Article 23, UDHR

4.2 The Department of Enterprise, Trade and Employment

The mission statement of the Department of Trade, Enterprise and Employment (DETE) reads as follows:

To promote the sustainable development of a modern competitive enterprise economy based on quality employment, social inclusion and enhanced working and living standards.³⁷⁸

The DETE comes under review in this report because of the importance of the right to work in enabling individuals and groups to fully participate in society.³⁷⁹ The right to work, particularly in terms of access to the labour market without discrimination and minimum levels of pay,³⁸⁰ also impacts greatly on the right to an adequate standard of living for the worker and his/her family.³⁸¹ Furthermore, the right to "just and favourable conditions of work" as well as "protection against unemployment"³⁸² has a great influence on a worker's right to physical and mental health.³⁸³

The interview conducted with the DETE revealed a high level of understanding of institutional racism on the part of officials working within the Department. Safeguards against institutional racism included the implementation of a systematic anti-racism training initiative, which started in 2002 with training of officials in direct contact with the public, and was extended to officials in management and policy-making positions the following year. While the outcomes of this initiative have not been formally evaluated, the DETE is in consultation with the NCCRI over the future of this initiative, and welcomed the suggestion by the research team that it should include an evaluation of the effectiveness of the training it has already undertaken, in its forthcoming plan. However, the high level of awareness within the Department of the importance of anti-racism and human rights, in terms of avoiding a disproportionately negative impact of the Department's policies and practices on vulnerable groups within the labour market may be seen in the importance attributed to equality-proofing in the preparation of Memoranda, internal anti-racism training and the close working relationship the Work Permits Section has with bodies such as Migrant Rights Centre Ireland.³⁸⁴

There is a gap between the policy areas that come within the remit of the DETE and areas where people from minority ethnic groups feel discriminated against. While the DETE acknowledges the over-representation of migrant workers at the lower end of the labour market, they suggest that it is not the function of the DETE to tackle this issue. It was felt that this a matter coming within the remit of other bodies, for example the Equality Authority, with the duties, powers and funding for combating racism and promoting equality in multicultural workplaces.³⁸⁵ However, if there is space for gender mainstreaming and the promotion of Equal Opportunities on the grounds of gender within the National Employment Action Plan, of which the DETE is the author, equal opportunities for people from minority ethnic groups might also be promoted and mainstreamed.³⁸⁶

4.2.1 Experiences of Vision 21 participants

There was a consensus among migrant participants (this paragraph refers to those other than migrant workers residing in Ireland on the basis of work permits, as their positions are by definition limited), that migrants face more difficulty in finding employment. It was noted that in Ireland, finding employment might not be the main issue for migrants. Instead, it is finding a job that matches qualifications attained in other countries. Participants felt they were part of a vicious circle whereby they required Irish experience to get employment but no one would employ them in order to allow them to gain the work experience employers were looking for.

It is worth noting that the majority of participants in focus groups one, two and three had degrees and diplomas and other skills which would qualify them for a range of jobs in Ireland. Many workers were in jobs far below their skill levels and felt that their qualifications were not valued. Many had challenges in getting their qualifications and experience recognised by employers. It was suggested that there is a certain level of acceptance of this inevitability, even from staff working with immigrants. Participants gave examples where training and teaching staff, employed in government-funded programmes, consistently gave the impression that they would be most likely to secure unskilled manual work.

Participants reported experiencing discrimination in access to employment due to their visible ethnicity. When asked if they knew where to complain or seek advice, some participants mentioned the Equality Authority and the Citizens Information Centres. It was clear that participants felt the state had a role to play in addressing issues affecting migrant workers. Those on work permits felt that the work permit system was unfair in giving too much power to employers, and can hamper the ability of migrants settling into working life and secure employment. An international student felt it was nearly impossible to live with the restriction of working only 20 hours. The uncertainty around work permit procedures including changing employers can also cause difficulties. On the one hand, it was felt, employment law and bodies such as the Equality Authority exist to protect the rights of minority ethnic communities but employment and work permit policies could be reviewed to ensure that the system itself does not allow for exploitation and discrimination. Asylum seekers, who do not have the right to work, expressed frustration and anger, not at the policy itself, but at the length of time they had to wait in the asylum process until they were granted refugee status and entitled to take up paid employment. This was also the case with those who were parents of 'Irish born children'.

Participants in the Traveller focus group outlined the lack of recognition of the skills Travellers had to offer and the loss of their old way of life such as tending horses (following the Control of Horses Act, 1996) and metalwork. When dealing with state employment services as well as private employers directly Travellers often feel that they are not considered seriously for employment from the start. Several participants had been in contact with state services when looking for work but have not received the follow-up contact that they had been assured of. This treatment has led many Travellers to believe that state employment services have nothing to offer them. One participant remarked: "There are many Travellers that have to hide their identity to find a job... They have to live a double life... if people knew they were a Traveller they would never get a job." The feeling is that both personal and institutional racism, combined with reluctance on behalf of private employers to employ Travellers, result in creating barriers for Travellers to enter the labour market.

Knowing where to access information and advice on employment and jobs was another issue for a number of participants. They felt that there was a lack of guidance and support and this made it more problematic to access employment. Participants in the Traveller group felt that it was difficult to access mainstream employment because there is a lack of confidence and they would not be afforded the flexibility and informality that they would be used to within their own community. Suggestions to improve the situation included the creation of more opportunities for Travellers to work for their community and provide services and having more people to work on education and training as well as employment advice. Those on work permits felt that information on work permit procedures and advice on how to deal with difficult employers should be made more widely available. When asked who would be best

"The realisation of rights is in large part dependent on adequate protection, information and redress mechanisms. At a statutory level, greater resources must be given to bodies such as the Labour Inspectorate and the Employment Rights Unit in the Department of Enterprise, Trade and Employment to ensure that they can fulfill their statutory role, including the provision of targeted and accessible information to migrant workers on their employment rights."

Safeguarding the Rights of Migrant Workers and their Families
Irish Human Rights Commission & NCCRI
(2004)

“The content outlined within Appendix 1 [of Ireland’s First Report to the Committee on the Elimination of Racial Discrimination] can be distilled down to three essential points:

- The level of financial resources targeted at the Traveller community
- The plethora of sub-legislative policy aimed at Travellers
- A tacit acceptance that the above continues to fail to address the discrimination experienced by Travellers.”

Irish Traveller Movement Shadow Report and Commentary on the First National Report by Ireland to the CERD Committee (2005)

placed to deliver such as service participants felt that more funding could be made available to employ community and support workers who themselves were members of migrant communities.

4.2.2 Access to the Labour Market for People from the Traveller Community

Arising from the government’s commitments under Sustaining Progress, the National Anti-Poverty Strategy and the National Action Plan for Social Inclusion among others,³⁸⁷ the DETE operates a number of programmes that aim to improve access to the labour market for people from minority ethnic groups. In spite of a number of programmes targeted at the Traveller Community,³⁸⁸ the latest census figures show that people from the Traveller Community are startlingly over-represented in terms of unemployment, with 73% of men and 63% of Traveller women officially unemployed, as opposed to 9% and 8% respectively of the general population.³⁸⁹ When questioned by the CERD Committee on continuing high levels of unemployment within the Traveller Community in spite of its initiatives, the State attributed its lack of success to the low retention rates of Travellers in formal education.³⁹⁰ However, in its submission to the Committee, the Irish Traveller Movement has attributed this to the low impact of the DETE’s targeted employment programmes due to a lack of resources, the existence of other policies that undermine the potential of these programmes, as well as an acceptance of the status quo at institutional level.³⁹¹

The CERD Committee recommended the Irish Government to “intensify its efforts to fully implement the recommendations of the Task Force on the Traveller community, and that all necessary measures be urgently taken to improve access by Travellers to all levels of education, [and] their employment rates.”³⁹² A significant shortcoming in the DETE’s approach to improving access to the labour market for members of the Traveller Community is the lack of focus which it places on self-employment, particularly within the traditional Traveller Economy, in spite of a marked preference among members of the Traveller Community for self-employment.³⁹³ The need for the State to take positive steps to combat barriers to self-employment was highlighted in a study published by Pavee Point in 2003, which described the difficulties encountered by Travellers in setting up their own business, such as “barriers in accessing credit” and “discrimination when applying for trade licences.”³⁹⁴ Moreover, the study showed that certain laws, including the Casual Trading Act, 1995 and the Control of Horses Act, 1996 constitute real impediments to the Traveller Economy.³⁹⁵

If equality-proofing was a standard tool of practice at the time these laws were enacted, they could have been drafted in such a way that they would not have had a disproportionate negative impact on the Traveller Economy.³⁹⁶ The importance of eliminating racism at State level in order to effectively improve access to the labour market for people from the Traveller Community may be seen in the limited success of the European Union funded Equal Initiative on the development of the Traveller Economy, the limitations of which are accredited to the State’s unwillingness to mainstream equality, including respect for and acceptance of cultural diversity as a part of its overall strategy for economic development.³⁹⁷

- **Recommendation:** There is a need for a cross-departmental approach in order to combat racial inequalities in the labour market. Current practices with regard to gender mainstreaming should be extended to ensure that people from minority ethnic groups have equal opportunities in the labour market, taking into account the examples of good practice discussed in Part I of this report.³⁹⁸ Recommendations

made by the Task Force on the Traveller community to improve access by Travellers to employment and to all levels of education must be fully implemented

4.2.3 Access to the Labour Market for Asylum Seekers and Refugees

Refugees and people with humanitarian leave to remain, who have the right to work,³⁹⁹ can experience significant barriers in accessing the labour market. A study carried out by Fanning and Loyal in 2000 noted that qualifications can become outdated during the asylum process.⁴⁰⁰ They also identified direct and indirect discrimination, language barriers and obstacles relating to the recognition of qualifications as factors which place refugees at a particular disadvantage in terms of job-seeking. While the State operates various programmes, such as the FÁS 'Back to work' programme for refugees and people with humanitarian leave to remain,⁴⁰¹ barriers to accessing employment in the areas in which asylum seekers and refugees would have worked before coming to Ireland are not adequately tackled, which results in asylum seekers and refugees being forced to take unskilled jobs, which in turn results in over-representation of people from minority ethnic groups at the lower end of the labour market.

Findings from Vision 21's consultation with people from ethnic minority groups on institutional racism found that discrimination in access to employment was common. While participants in the research could not prove these allegations, there was a consensus that participants were judged on their appearance or country of origin, rather than their skills. Even where candidates did not attribute the fact that their application for a particular post was not given any real consideration to racism, there was a feeling that work experience obtained outside Ireland did not count. In addition to experiences of direct discrimination, Fanning and Loyal note that non-citizens experience indirect discrimination in accessing the labour market, as they are unable to avail of the social networks which Irish people avail of in job-hunting.⁴⁰² They are also lacking the in-depth knowledge which Irish people have of how the national labour market works, for example they lack knowledge of the history of particular companies or sectors and recruitment practices.⁴⁰³

- **Recommendation:** A programme should be put in place to redress the barriers encountered by migrants, refugees and persons with humanitarian leave to remain in accessing work as part of a comprehensive integration programme.

4.2.4 The Enforcement of Ireland's Employment Legislation

While discrimination in relation to access to employment is covered under the Employment Equality Act, it is extremely difficult to prove. Questions arise concerning whether employers are sufficiently aware of their obligations under the law in this respect and whether enough is being done on the part of the State to make this section of the law effective. Improving employers' knowledge of their obligations towards people from minority groups under this legislation, as well as the consequences of a finding against them in relation to this legislation could significantly improve access to the labour market for refugees and persons with humanitarian leave to remain, who are legally entitled to work.⁴⁰⁴

At the same time that the DETE were confident that employers are sufficiently aware of their obligations under Ireland's employment equality legislation, they stressed that under its present mandate, the labour inspectorate may only investigate whether an employee's working conditions comply with the minimum standards set down in Irish law, such as the minimum wage. In addition to not being empowered to investigate discrimination in terms of accessing

'I received the work authorisation but I didn't receive any other information – what should I do next? I looked for a job on the Internet but I didn't know how to give my information.'

'I have been useless for many years, now I can get work. How I find out where I am valued for work'

Participants with refugee status or permission to remain, in Vision 21 consultation

“In relation to (a) access to employment (b) conditions of employment (c) training or experience for or in relation to employment (d) promotion or regrading or (e) classification of posts, an employer shall not discriminate against an employee or a prospective employee and a provider of agency work shall not discriminate against an agency worker”

Section 8
Employment Equality
Act 1998

employment, the labour inspectorate has no power to act in situations where employees are being discriminated in terms of differential treatment or where some employees are being paid above the minimum wage and others are not. In each of the above cases, they said that they would refer the matter on to the Equality Authority.⁴⁰⁵ While the attitude of the DETE is positive in this respect, the appropriateness of the Equality Authority as a means of attaining redress in the above cases is doubtful, given the resources available to the Equality Authority and the range of fields of activity for which it is responsible.

While migrant workers have the same employment rights as Irish workers in theory, in practice they tend to find themselves in a more vulnerable position, often as a result of the types of jobs which they tend to have. The DETE pointed out that workers may be too afraid to complain or tell the truth about their working conditions, having been intimidated by their employer. In order to overcome this obstacle, the DETE are in the process of putting in place a cross-departmental initiative along with the Department of Finance and the Department of Social and Family Affairs, so that they can ensure that migrant workers are being paid the minimum wage and that their social security is being paid for them, rather than enriching an unscrupulous employer.⁴⁰⁶

- **Recommendation:** Consideration should be given to the expansion of the role of the Labour Inspectorate, so that discrimination in the workplace may be effectively tackled. This expansion should be accompanied by the allocation of sufficient resources in order to ensure the effectiveness of the Inspectorate.

4.2.5 Migrant Workers

The current work permit system, which gives the employer rather than the employee the work permit, leaves migrant workers in a particularly vulnerable situation.⁴⁰⁷ According to Mary Robinson, the Former High Commissioner for Human Rights, this process resembles “bonded labour”.⁴⁰⁸ In 2005, the DETE published the Employment Permits Bill, 2005, which, according to the Minister, would introduce a ‘Green Card’-type system, where a two-year permit could lead to permanent or long-term residency, and holders of such permits would be immediately entitled to family reunification. Furthermore, the permit-holder’s spouse would be entitled to work without requiring a work permit. However, the Immigrant Council of Ireland has noted that that, “[a]s currently drafted, the Bill does not significantly change the work permit or working visa/authorisation schemes.”⁴⁰⁹ It points out that the DETE “has not taken the opportunity presented by this Bill to address key deficiencies associated with current forms of permission to work in Ireland”, which “relate to the ownership of labour, the exploitation of workers, the enforcement of existing legislation and, in particular, the great disparity between the rights afforded to different categories of workers to family reunification and the rights of their spouses to work”. The ICI has suggested several amendments to the Bill if it is to ensure that the proposed legislation actually addresses and improves upon the deficiencies of the current employment permits system.

While the issuing of work permits directly to the worker is not specifically proposed in the Employment Permits Bill 2005, the DETE stated that the decision to give work permits directly to employees is not completely out of the question, especially given the CERD Committee’s recommendation that the State review its current policy and give work permits directly to the workers themselves.⁴¹⁰ While the Bill will institute a number of safeguards against the exploitation of migrant workers, unless work permits are given directly to employees their ability to effectively invoke their human rights will remain the same.

- **Recommendation:** The Employment Permits Bill 2005 should be amended in line with the Immigrant Council of Ireland's recommendations. In order to ensure the effective enjoyment of their human rights, migrant workers, rather than employers, must be issued with their work permits.
- **Recommendation:** The Department should conduct and publish economic information to show the positive impact of migrant workers on the Irish economy.

4.2.6 Women from minority ethnic communities

The CERD Committee recommended the Irish Government to "take measures with regard to the special needs of women belonging to minority and other vulnerable groups, in particular female Travellers, migrants, refugees and asylum seekers".⁴¹¹ Women from minority ethnic communities face additional barriers in accessing the labour market, the main obstacle being lack of affordable childcare.⁴¹² The requirement of having signed on the live register in order to access work on community development programmes disproportionately affects Traveller women, many of whom would have never worked outside the home, having married young.⁴¹³ The exemption in the Employment Equality Act relating to work done in private houses has a disproportionate impact on non-citizen women, who are disproportionately represented as domestic workers. While this exemption applies to access to, rather than conditions of employment, the ambiguity surrounding domestic worker's entitlements under Ireland's employment equality legislation does not provide adequate safeguards against exploitation.⁴¹⁴

- **Recommendation:** The State should amend the provision in the Employment Equality Act 2004, which excludes domestic workers from its protection.

4.3 The Department of Health and Children

The mission statement of the Department of Health and Children is:

To support, protect and empower individuals, families and their communities to achieve their full health potential by putting health at the centre of public policy and by leading the development of high quality, equitable and efficient health and personal social services.

The Department comes under scrutiny in this report in respect of its health brief (not its role in relation to children) as both an Employer and a Service Provider. However, while the Minister for Health and Children was asked to provide a nominee for interview who could speak on behalf of the Department in both roles, the research team was provided with a representative from the Health Services Employers Agency.

As a service provider the Department is responsible for ensuring that everybody living in Ireland is able to enjoy "the highest attainable standard of physical and mental health"⁴¹⁵. In order to comply with its duty not to discriminate in relation to the right to health, the DOHC, as an agent of the State must ensure that healthcare is both accessible to and culturally appropriate for people from minority ethnic groups. As the largest public service employer of people from minority ethnic groups, the Department of Health is responsible for ensuring the right to freedom from racial discrimination in the workplace.

4.3.1 Experiences of Vision 21 participants

When asked to describe their experiences with health services, many participants described

"One of the primary barriers to Traveller women participating in ... employment is their experience of individual and institutional racism ... when attempting to gain access to employment."

Submission of the Irish Human Rights Commission to the UN CERD Committee (2005)

“She smiled and said to me look... here in Ireland we don't do that. I said why? ... Is it not in my religious freedom? She referred me to the senior person and I came back another time and they said 'okay we will see what we can do'. I waited and they gave me an appointment for a year and a half later so I called and said I can't wait. My boy will be older and it will be very painful. So I got information and found that in Dublin there is a shorter period so I got a six months appointment. To use the lady's words, she said that for the service it was not a priority and it was not very humane. I didn't ask for her opinion on my culture.”

Migrant parent in Vision 21 consultation

having had generally positive experiences. Discussing satisfaction with services, a number of issues were raised which were not specific to minority ethnic groups and related to the overall quality of health care services e.g. waiting lists. Some immigrant participants explained why, at times, they did not feel comfortable dealing with General Practitioner (GPs). The difficulties were mainly around language in terms of explaining their complaint to the GP and understanding the explanation or diagnosis when it was given. Some of these participants were not registered with a GP. These were generally those who did not have children and when asked what they would do if they became ill, some said they would go to the chemist while others said they would go to the emergency department at the hospital indicating either a lack of familiarity with GPs or a significant level of discomfort. For migrant participants, language appeared to be the most apparent barrier in accessing health services. One respondent said: "It can take a very long time to explain your problem. I don't know if I have it right." When asked how they coped with these difficulties, one person responded that she relied on her husband whose English was much better than hers. Another said: "You learn to communicate with your hands.... pointing." None of the participants in that focus group were aware of any available interpreting services and how they might even begin to access this if it were available to them. It is interesting to note though that the participants took this difficulty as more of a responsibility on themselves to improve their English in order to make themselves clearer to the health professionals.

While many participants highlighted that some progress has been made in relation to male circumcision, it was also raised as something that needs more attention. This was something that was seen as culturally and religiously significant for some of the focus group participants.

Generally, Traveller participants felt that healthcare is accessible, but all had heard of and some had experiences of difficulties relating to personal racism by individual members of staff in the healthcare system. The Traveller participants felt that healthcare staff more readily accepted Travellers who were most like the settled community in their appearance. One participant said: "Once staff [members] hear a Traveller accent it changes everything." It was felt that staff will often change their demeanour when they realise that they are dealing with a Traveller client. Though it is difficult to say whether this leads to different outcomes for Travellers, it certainly increases their feeling of discomfort in accessing the service in the first place.

4.3.2 The Health Service as an Employer:

A significant effort has been made by Health Service to combat racism in the work place.⁴¹⁶ The Health Service Management Institute (IHSMI) is in the process of elaborating anti-racist policy and practice guidelines in conjunction with the NCCRI.⁴¹⁷ As with other sectors, it is hoped that these guidelines are accompanied by training in order to ensure their effectiveness.⁴¹⁸ However, the DOHC's approach to combating racism within the Health Service is problematic in that it only focuses on cultural, rather than power relations.

While people from minority ethnic groups are over-represented in the lower ranks of the sector, the Health Service Employer's Agency (HSEA), who were nominated by the Department to speak on its behalf, rejected the notion that institutional racism might be responsible for the preponderance of people from minority ethnic groups in the lower ranks of the health service. However, the view expressed by the HSEA during the research team's interview revealed a limited understanding of institutional racism, which did not include measures which had a disproportionate negative impact on people from minority ethnic communities unintentionally or as the result of an omission.⁴¹⁹ Moreover, a reluctance to deal with inequalities in the health

service in terms of 'race' was observed.⁴²⁰ This view was also expressed by the Irish Medical Organisation (IMO), who noted that doctors from minority ethnic communities, who were experiencing problems with their employer preferred to have their cases dealt with on the merits, rather than by bringing 'race' into the equation.⁴²¹

While "nearly half the junior doctors working in Irish hospitals are non EU doctors only about 1% attain consultant status."⁴²² The HSEA has expressed concern that to draw the conclusion that institutional racism exists as a result of these statistics would be to grossly oversimplify the reason for this current state of affairs. It has stated that to suggest that institutional racism is at work here would be to assume that all doctors wished to become consultants, further explaining the lack of consultants from minority ethnic communities by referring the research team to the Hanley report, which recommended the creation of more posts, where junior doctors would receive accredited training, which would enable them to achieve consultant status.⁴²³

At present, Ireland has one of the lowest consultant per capita rates in the Organisation for Economic Co-operation and Development (OECD) countries. Furthermore, while all junior doctor posts are training posts in theory, in practice this is not the case.⁴²⁴ Doctors from minority ethnic groups experience difficulties when it comes to entry into the institutions, which provide accredited training programmes for higher specialist training.⁴²⁵ There is a need for further investigation into this matter in order to clarify the reason for these difficulties and it must be emphasised that the DOHC can certainly not rule out institutional racism without conducting such an investigation. Even if this over-representation of people from minority ethnic groups in the lower ranks of the Health Service results from indirect, rather than direct or intentional discrimination, the Department still has a responsibility under article 2 of ICERD to undertake affirmative action in order to ensure equality of opportunity for healthcare professionals from minority ethnic groups.⁴²⁶

As regards access to training for nurses, the HSEA concedes that, while migrant nurses and other employees have experienced difficulty in accessing vocational training,⁴²⁷ a factor which has a significant impact on an individual's potential for career development,⁴²⁸ it has made a considerable effort to ensure that migrant nurses are given equal access to training in recent years. It also maintains that the Fixed Term Employment Act 2003, which obliges employers to treat employees on fixed term and other contracts equally in terms of access to training as well as other matters, has allowed for significant progress to be made in the area of equal opportunities for migrant nurses.⁴²⁹

While the Protection of Employees (Fixed Term Work) Act of 2003 has improved conditions for employees at the level of legislation, it is not always respected by employers in practice, as the case of *Chalikonda V.R Prasad v. Merlin Park Regional Hospital* has shown.⁴³¹ The HSEA has emphasised that it is one of its priorities to decrease reliance on short-term contracts by Health Service Employers, as it considers the system of continually renewing short-term contracts for employees to constitute bad practice in that it is unfair on the employee, who is deprived of job security.⁴³² From an anti-racism perspective, this reliance on fixed term contracts disproportionately affects healthcare professionals from minority ethnic communities, both in terms of numbers and the fact that they do not have the same local support network as Irish healthcare professionals.

Good practice in terms of dealing with applications for promotions and offering opportunities for training constitute safeguards against institutional racism within the Health Service. Both

'The health service has been very good towards asylum seekers.'

'The people [working in public services] here are very polite and nice to me.'

'My child was sick and was in hospital for one week. The staff were very good to me.'

'I was received very well when I first arrived in Ireland.'

Participants in Vision 21 consultation focus groups

“Health inequalities can arise across a number of the grounds of equality legislation including ... ethnicity Some of the barriers that minority groups may face may be attitudinal amongst service providers. Other barriers may be communication barriers and the provision of information by methods that are inaccessible to certain minority groups” This report recommended the health service to “monitor primary and secondary care access for equity on the basis of ... ethnicity”

Health Inequalities and Irish General Practice in areas of deprivation
Dr Philip Crowley, Irish College of General Practitioners (2005)

the Irish Nurses Organisation (INO) and the Overseas Medics of Ireland (OMI) have called into question the level of transparency inherent in the interview process for jobs in the health service. The INO has stated that the “general suitability” in interviews allows for favouritism within the interview process.⁴³³ Furthermore, the OMI contends that a system of “patronage” exists within the Irish health service.⁴³⁴ The HSEA is satisfied with the level of transparency in the interview process and strongly disputes the views of these representative organisations.⁴³⁵ However, compulsory human rights and anti-racism training for health service employees taking part on interview boards would greatly enhance the confidence of people from minority ethnic groups in the interview process. It should be implemented within the Health Service, in recognition of the over-representation of people from minority ethnic communities at the lower end of the health service.

4.3.3 The Department as a Service Provider

Examples of good practice undertaken by the DOHC in order to improve the quality of service it provides to people from minority ethnic groups include the implementation of an equality review and an equality action plan as a pilot project in the North Western Health Board region.⁴³⁶ It is hoped that the outcomes of this project will lead to the mainstreaming of human rights and anti-racism as a central part of the Department's programmes and policies.

While targeted initiative such as the Traveller Health Strategy⁴³⁷ and the Minority Health Forum⁴³⁸ constitute very positive initiatives in terms of improving the health status of people from minority ethnic communities,⁴³⁹ it is worth noting that the motivation behind the implementation of targeted strategies by people from minority ethnic communities is perceived as aimed at their exclusion from the mainstream system.⁴⁴⁰ While targeted health strategies have a role in improving the health status of people from minority ethnic groups, the Department must ensure that these policies do not lead to a violation of article 3 of ICERD.⁴⁴¹

The Department must ensure that training on the special needs of people from minority ethnic groups and human rights and anti-racism training is mainstreamed for all healthcare professionals. An anti-racism strategy for healthcare professionals should include training on the delivery of culturally appropriate healthcare, in addition to the impact of religious beliefs on the way in which healthcare should be provided. Moreover, the need for systematic training in order to combat popular racism and prevent its transfer to institutions, such as the health service should not be underestimated.

There is a lack of safeguards at policy level in order to ensure that people from minority ethnic groups have access to treatment without discrimination. This is also evidenced by the fact that Travellers experience difficulty in getting a General Practitioner to take them on as patients.⁴⁴² Additionally, asylum seekers and refugees who are survivors of torture, have difficulty in accessing appropriate healthcare, as no facilities for survivors of torture exist outside Dublin. This constitutes a significant problem, given that asylum seekers have been systematically relocated outside of Dublin under the policy of Regional Dispersal since 2001 and that an individual has undergone torture often does not become apparent prior to this relocation.⁴⁴³

Even where positive measures exist, they are not well-known. For example, in spite of the fact that a translation service have existed for some time in the State, healthcare professionals are largely unaware that this service is available to them,⁴⁴⁴ which results in the standard of healthcare available to people with limited English being compromised. A potential for mis-

communication can arise out of a decision to use a family member or a friend instead of a professional interpreter. A professional interpreter should also be offered even in cases where the patient has a certain level of English, as anxiety may lead to communication problems. Moreover, this practice may also impinge on a patient's right to confidential treatment, which in turn can have an extremely detrimental effect on the appropriateness of the healthcare they receive. Patients may not want to reveal certain information about their case if the interpreter comes from their community, for example the extreme stigma attached to being HIV positive in several cultures may prevent patients from disclosing their condition and availing of adequate treatment. The fact that a family member accompanies the patient to the doctor may also prevent them from disclosing serious problems, such as spousal abuse.⁴⁴⁵

- **Recommendation:** Given that indicators of possible institutional racism exist within the Health Service, in terms of the over-representation of people from minority ethnic groups at the lower end of the pay scale and the low health status of people from minority ethnic groups, there is a need for the Health Service infrastructure to undergo a human rights audit, similar to the one undertaken by the Garda Síochána as part of the Health Service reform.
- **Recommendation:** While examples of good practice, such as the implementation of translation services, the provision of specialist care for survivors of torture and the North Western Health Board's equality initiative should become standard practice, policies and practices which have a disproportionate negative impact on people from minority ethnic communities need to be identified and eliminated.
- **Recommendation:** A particular emphasis should be placed on human rights and anti-racism training for policy-makers and health service providers, as well as participants on interview boards.

4.4 Department of Education and Science

The Mission Statement of the Department of Education and Science states:

The mission of the Department of Education and Science is to provide high-quality education, which will: enable individuals to achieve their full potential and to participate fully as members of society, and contribute to Ireland's social, cultural and economic development.

The Department of Education (DES) is responsible for ensuring the realisation of the right to education. In addition to ensuring that individuals are not discriminated against in terms of access to education, the Department must ensure that the cultures and identities of people from minority ethnic groups are represented within the school system. The education system must also "bridge the 'gap'" between mainstream and marginalized communities, which is "sometimes filled with distrust, with fear or disapproval or often with all three of them".⁴⁴⁶ The particular structure of Ireland's educational system, whereby educational establishments are publicly-funded, but privately run institutions,⁴⁴⁷ constitutes an obstacle to the implementation of a cohesive human rights and anti-racism strategy within the Department. This may be seen in the Department's response to a question on how international human rights law governs its approach. While it believed that its influence was felt quite immediately at policy level, it raised questions about the extent to which it had an influence at the level of individual schools.⁴⁴⁸ The private ownership of schools within the education system was also

"Challenges to the completion of this study include the limited availability, and the difficulty in accessing, education data disaggregated by national or ethnic origin. A further problematic area is the continued use of the categorization of 'non-nationals' by the Department of Education and Science as a 'catch all' category rather than the combined use of the categories of nationality and ethnic origin. As such groups such as Roma and Kurds are presently invisible in the present data collection systems."

*Analytical Study on Education - EUMC Raxen 3: Report on Ireland
National Focal Point: Equality Authority and NCCRI (2002)*

emphasised in response to a question on whether the Department was concerned about the high number of complaints concerning educational establishments taken to the Equality Authority.⁴⁴⁹

Owing to the concern expressed by the DES that it was not expecting its meeting with the Irish Centre for Human Rights to take the form of a formal interview, in spite of the fact that the Centre had requested in writing an interview, the Centre provided the Department with the list of questions devised by the research team in preparation for the interview in writing. Instead of replying to these specific questions, the Department sent the research team a number of policy documents, circulars and press releases.

While anti-racism and respect for diversity has been included in a number of initiatives organised by the Department of Education, there is no discernable anti-racism or human rights policy, nor Department-wide anti-racist code of practice.⁴⁵⁰ Moreover, there was a sense that increasing ethnic diversity within the system could be accommodated by existing policy and practice, in spite of the low levels of educational achievement among the Traveller Community under the traditional educational system.⁴⁵¹

4.4.1 Access to Education (A) "The 'Intersectionality' of Racial and Religious Discrimination":⁴⁵²



The fact that the majority of State-funded schools in Ireland are religious in character has resulted in a situation where discrimination on the basis of religious belief is permissible under Ireland's Equality legislation. Under the Equal Status Act 2000 and 2004, schools may give preference to a child who is of the school's religious denomination over a child who is not, or refuse to admit a child who is not of the school's religion.⁴⁵³ The clawback statement relating to both provisions is that the objective of the refusal must be the maintenance of the school's ethos.⁴⁵⁴ While this could be justified in the case of a minority school, for example the Muslim Primary school in Clonskeagh, given that there are only two Muslim Primary schools in the country, it cannot be justified in the case of Catholic schools on the grounds that most public schools in the country are Catholic.⁴⁵⁵

Lhamo Fitzsimons (4) and other children outside the Dáil in Dublin in 2005, at a candlelight vigil organised by members of Educate Together to seek state funding for multi-denominational education in Ireland

© Graham Hughes/Photocall Ireland

This preference is a form of discrimination, having an unjust result, that is that children of minority religious beliefs are last in the queue when it comes to access to education.⁴⁵⁶ While the State sees enrolment policy as being the responsibility of individual schools, the responsibility ultimately lies with the State, given its duty to prevent third parties from interfering with a child's "full enjoyment" of the right to education.⁴⁵⁷ While there have been no reported cases of children who are without a place in the education system because of this exception, it can result in children having to travel unnecessarily long distances to get to school.⁴⁵⁸

■ Recommendation: The Department should implement the CERD Committee's

recommendation "to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) in schools is concerned".⁴⁵⁹

(B) Access to Education for Travellers

It is important to note that access to education is not only a problem for children from religious minorities. Enrolment policies with provisions relating to feeder schools, catchment areas and having siblings who attend the school have a disproportionate negative impact on Traveller children.⁴⁶⁰ "Moreover, there is evidence that schools continue to enrol Traveller young people on the pretext of being full or by claiming that they cannot provide a suitable education for Traveller children"⁴⁶¹. There is a need for the Department to establish strict guidelines on enrolment, which provide safeguards against institutional racism and which must be adhered to by individual schools.

All of the participants in the Traveller focus group had attended primary school - some attended with members of the settled community and some attended all-Traveller classes. In one school a participant and her brother were placed in an all-Traveller class, but their mother asked the school Principal to have them placed in a mainstream class; and once the complaint had been considered, this was done. Participants felt that the pace at which the Traveller-only classes are held is quite slow and that many Travellers have not achieved basic literacy by the time they leave primary school. They also believed that teachers did not try to educate Travellers in all-Traveller classes; rather they approached them as a 'lost cause'.

- **Recommendation:** The Department of Education should introduce strict guidelines, supported by legislation, in order to ensure effective non-discrimination with regard to access to schools for people from minority ethnic groups.

(C) Access to Third Level Education

Section 7 of the Equal Status Act, 2000 (as amended) restricts eligibility for entry and grants for third level institutions to European Union National.⁴⁶² This policy further contributes to the marginalisation and disempowerment of asylum seekers, as they are unable to apply for places in third level colleges, even if they are able to pay the high fees which non-European nationals are liable to pay, as third level applicants must be in possession of a student visa or a resident permit. This restriction also has a disproportionate negative impact on children of asylum seekers and unaccompanied minors, who have gone through the secondary system.⁴⁶³

(D) Participation of Representatives of Minority Ethnic Communities in Decision-Making

People from minority ethnic communities are under-represented as both board members and staff of educational establishments. A study commissioned by the Equality Authority has shown that the denominational roots of "prevailing models of educational management" constitute an impediment to the participation of "groups that do not operate within such structures"⁴⁶⁴ within the educational system. Additionally, the Irish language requirement for primary school teachers constitutes a barrier to recruitment for people from minority ethnic communities, and consideration should be given to positive action measures to recruit minority ethnic groups to teaching posts, or, at the very least, an amendment to the Irish language requirement similar to that adopted for recruitment to the Gardai.

- **Recommendation:** The Department should transparently consult with representa-

"After first year [of second level school] there is a dramatic fall off in Traveller enrolment. The reason for this are complex and interrelated and include ... [l]ikely failure of some schools to maximize and effectively target the extra resources they are given for Traveller education; [t]he withdrawal of children from mainstream classes into separate classes; [f]ailure to acknowledge and to accommodate Traveller culture and in some instance institutional discrimination plays a role in excluding Travellers from schooling"

Analytical Study on Education – EUMC Raxen 3: Report on Ireland

National Focal Point: Equality Authority and NCCRI (2002)

tives from minority ethnic communities, as well as teaching professionals, in its drafting and implementation of policy, particularly as regards policies and programmes which are targeted at minority ethnic communities.

- The Department must undertake targeted recruitment of people from minority ethnic communities.
- Consideration should be given to the recruitment of language teachers from minority linguistic communities in order to facilitate the provision of minority language classes.
- The management board of all educational establishment should reflect the ethnic diversity of the schools' populations.

4.4.2 Barriers to Educational Achievement in Minority Ethnic Communities

The low educational performance of children from the Traveller community communities raises questions about institutional racism. The Department is in the process of drafting a Traveller Education Strategy in order to improve educational achievement among people from the Traveller Community. While external factors such as living conditions on halting sites severely impinge on Traveller's potential for educational achievement, the DES must take responsibility for factors such as "failure to acknowledge Traveller culture and in some instances institutional discrimination" and "lack of expectation on the part of teachers and parents"⁴⁶⁵ have also been

identified as factors which inhibit the performance of Travellers within the formal education system. In its Guidelines on Traveller Education in Primary Schools (2002), the DES defined intercultural education as aiming to foster conditions conducive to pluralism in society; raise children's awareness of their own culture and attune them to the fact that there are other ways of behaving and other value systems; develop respect for life-styles different from their own so that children can understand and appreciate each other; foster a commitment to equality; enable children to make informed choices about, and take action on, issues of prejudice and discrimination; appreciate and value similarities and differences; enable all children to speak for themselves and articulate their cultures and histories.

Furthermore, the fact that a high proportion of earlier waves of refugees and migrants, such as the Vietnamese, were early school leavers⁴⁶⁶ indicate that the Department needs to take special and concrete measures in order to ensure that no hidden barriers to educational achievement for people from minority ethnic groups exist within the system. While anecdotal evidence suggests that migrant children have had a positive impact on schools' educational achievements, there is a dearth of research in this area.

- **Recommendation:** The education system must undergo an independent equality audit, in order to identify policies and practices which may inhibit the educational achievement of learners from minority ethnic communities.



Mary (4) Dina (4) and Paddy Collins (2) at the launch in 2004 of a range of Traveller Jigsaws for use in primary and pre-School education depicting aspects of traveller life and culture, in the Pavee Point Travellers Centre, Dublin

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(A) Language Support

The level of language support available to schools is inadequate and underresourced. Furthermore, the position of language support teacher as a temporary one has led to difficulties in recruiting qualified staff.⁴⁶⁷ The fact that language support was only available to students for two years is not enough to enable them to reach "current academic standards."⁴⁶⁸ The absence of teachers with a general support role, in addition to the low numbers of language support teachers has led to a situation where children from minority ethnic groups being given additional assistance by the special needs teacher. Aside from the fact that this is taking away valuable resources from another vulnerable group within the education system, there is a danger of stigmatising and limiting the potential of children who do not speak English. This practice may also lead to the children's mother tongue being devalued.

- **Recommendation:** Resources for language support should be increased, in order to allow for effective equal opportunities for children from minority linguistic groups.
- Moreover, learning support for children from minority ethnic communities should not be confined to language support.
- Safeguards should be established in order to ensure that children from minority ethnic groups are not allocated classes with the special needs assistant, unless appropriate.

(B) Minority Languages

It is of the utmost importance that space is made for minority languages within the Irish school system, in order to ensure respect for minority ethnic communities' culture and identity. While the DES has refused to even consider the option of mother tongue language classes for children from linguistic minorities, the Irish Association of Teachers in Special Education (IATSE) has indicated that the provision of mother tongue language classes "should be possible where there is a concentration of children with the same first language",⁴⁶⁹ for example around Beaumont hospital in Dublin, where there is a large concentration of Filipino children, owing to the targeted recruitment of Filipino nurses. The Department's refusal to even consider this option raises questions about whether it is genuinely interested in facilitating a dialogue between cultures or whether it has grasped the fact that migrant communities are here to stay.

- **Recommendation:** The Department should consider providing minority language classes in places where there is a significant linguistic minority in the same school.
- **Recommendation:** Where this is not possible special measures should be in place in order to ensure that minority ethnic languages are recognised and valued.⁴⁷⁰

(C) Guidelines on Culturally Appropriate Education

While the Department has issued guidelines on Traveller Education, these guidelines were launched without any accompanying training, which had the effect that they were not incorporated into everyday practice.⁴⁷¹ While guidelines on Intercultural Education have been launched by the NCCA, it is of the utmost importance that these guidelines are accompanied by training in order to ensure their effectiveness. Moreover, the implementation of these guidelines must be monitored and evaluated in order to ensure that they are effective.⁴⁷²

"Within the school system, the Department of Education and Science operates a deficit model of education and language support for Black and minority ethnic learners. The education system indirectly discriminates against Black and minority ethnic learners by forcing them to study through the medium of English, and failing to provide sufficient English language support. Emphasis is placed on what Black and minority ethnic learners do not know rather than what they do know. There is also a lack of English language support for pre-school age children."

NGO Alliance Shadow Report

In Response to the Irish Government's First National Report to CERD (2004)



Students, Fummy Salami (6), Nigeria, and Anand Eukhbold, (6) Mongolia, from St Audeon's National School, Dublin, wait to present the Minister for Education with a gift as she launched the Intercultural Education in Primary Schools: Guidelines for Schools, at their school in May 2005.

© Graham Hughes/Photocall Ireland

- **Recommendation:** The launch of the Department's guidelines on intercultural education should form part of an overall human rights and anti-racism programme within the Department of Education.
- **Recommendation:** The implementation of this guideline, as with all initiatives aimed at ensuring the right to education without discrimination, must be monitored and evaluated in order to ensure its effectiveness.

There is a general need for the Department to invest in human rights and anti-racism education. While teachers may focus a certain amount on discrimination and equality as part of their degree course, the Department regards responsibility for ensuring that adequate safeguards against racism, even unintentional racism, on the part of teachers, as being the responsibility of the teacher training institutions.⁴⁷³

Also, while human rights training is available as in-service training, if schools motivated enough to organize it for themselves, but there is nothing available through the Department. This is unacceptable given the pivotal role in combating racism in society.

- **Recommendation:** Given the pivotal importance of education in combating racism, there is an urgent need for the Department of Education to develop a cohesive human rights and anti-racism education programme for teachers, in order to equip them with the skills to challenge racism where it presents itself in the classroom, in the school or through the influence of external factors, such as media stories. This programme should be developed in consultation with teaching professionals and representatives from minority ethnic communities.

Footnotes

285. <http://www.justice.ie/80256DFD00637EE0/vWeb/pcSSTY5UBER3-en>, consulted 04.04.2005.
286. Ibid.
287. Letter from Dr. Vinodh Jaichand to Minister Frank Fahey, 11.03.2005.
288. Interview with the Department of Justice, Equality and Law Reform, 18.04.2005.
289. Ibid.
290. NCCRI, *Reported Incidents relating to Racism*, May – October 2004, at p. 3.
291. DJELR, "McDowell announces decrease in the number of racist attacks", 26.11.2004. "In 2002 there were 102 such incidents recorded compared to 69 such incidents in 2003 and 42 incidents so far this year (8 November)". Compare these statistics with those of the NCCRI, which recorded 70 reported incidents from the period May – October 2004. NCCRI, *Reported Incidents relating to Racism*, May – October 2004, at p. 3.
292. Loyal and Mulcahy (2001), *Racism in Ireland: The Views of Black and Ethnic Minorities* Amnesty International – Irish Section, at p. 5. "54% of respondents do not feel confident reporting a racist incident to a Garda". See also Michael Brennan, "Ethnic Groups Reluctant to Report Attacks, says [Irish Refugee] Council", *The Irish Examiner*, 12.10.2002
293. See Section 5.2.5(b) of Part I of this report. See also Dr Vinodh Jaichand, *Evaluation Report on the Development and Implementation of a Non-Discrimination Pre-service and In-Service Training Programme for Judges and prosecutors on the Basis of Human Rights Education* in Austria, Hungary, Slovakia and Slovenia, 20 November 2005, Irish Centre for Human Rights.
294. See Equality Authority (2003), *Overview of Employment Equality Act 1998 and the Equal Status Act 2000 in light of the Transposition of the European Union 'Race' Directive, Framework Employment Directive and the Gender Equal Treatment Directive*, at p.22. The Equality Authority notes that the maximum level of compensation of ten thousand pounds currently available under the Employment Equality Act is less than the maximum level of compensation, which was available under the 1977 Employment Equality Act. It states that the present limit "is not a persuasive, proportionate or effective remedy on account of the maximum that can be awarded, and is arguably in breach of the Directive"
http://www.equalitytribunal.ie/htm/equal_status_information/faq_21.htm, consulted 25.04.2005
295. See section 2.4
296. Illegal Immigrants (Trafficking) Act 2000, at section 5(2).
297. See Delaney, "Extension of Time for Bringing Judicial Review pursuant to Section 5 of the Illegal Immigrants (Trafficking) Act 2000", (2003), *Irish Law Times*, at p.239.
298. See In the Matter of Article 26 of the Constitution and Section 5 and Section 10 of the Illegal Immigrants (Trafficking) Bill 1999, 2000, 2 IR 360: "The legislation could operate in a way which would prevent those deported under its provisions from effectively mounting a challenge in the court to the validity of the State's actions".
299. Note 6 above, at para. 24.
300. For a discussion of the implications of the Legal Aid Boards decision to restrict access to legal aid for asylum applicants seeking judicial review see Hall, "Asylum Seeker must not be denied the right to a fair judicial process", 02.04.2001, *The Irish Examiner*.
301. See Comhairle on the areas in which the Legal Aid Board tends to provide legal aid.
<http://www.cidb.ie/live.nsf/0/802567ca003e043d80256f39004b2e20?OpenDocument>, consulted 01.05.2005. FLAC (Free Legal Advice Centres) has found, "access to legal aid and advice for immigrants is an issue which has not been widely examined in relation to access to legal services in Ireland". FLAC (2005), *Access to Justice: Access to Justice: a Right or a Privilege? A Blueprint for Civil Legal Aid in Ireland* One of the main aims of the Traveller Legal Unit of the Irish Traveller Movement was to counter difficulties in accessing the law encountered by Travellers. One of its aims is the identification of barriers to accessing legal aid for people from the Traveller Community. See ITM, Strategic Plan for the Irish Traveller Movement Legal Unit, Goal 1: "Examining the barriers for Travellers in accessing legal aid and designing strategies to address these barriers".
302. The Law Reform Commission (2003), *Consultation Paper on Multi-Party Litigation (Class Actions)*, LRC CP 25 – 2003, at p. 1.
303. Order 15 Rule 9 of the Rules of the Supreme Court 1986.
304. Note 302 above.
305. For a discussion of the limitations surrounding representative action, see LRC, note 302 above, pp.4 – 10. "To summarize, whereas the wording of Order 15 Rule 9 suggests a procedure of wide-ranging application in practice its various limitations outlined above have undermined the representative

"Institutional Racism: The application of general rules and / or practices that do not make allowances for cultural differences. This includes indirect discrimination, a lack of proactive measures to prevent discrimination, a lack of professional expertise or training in dealing with diversity and a lack of workable facilities for consultation and listening to minority groups."

Intercultural Education in the Primary School: Guidelines for Schools National Council for Curriculum and Assessment (2005)

- procedure as a vehicle for potential class claims", at p. 10. See also Cousins, "The Protection of Collective Rights before the Irish Courts: Parts I and II" (1996), *Irish Law Times*.
306. See Sullivan, "A Liberal Approach to the Issues of Locus Standi and the Contrasting Entitlements to Civil Legal Aid", (2003), *The Galway Student Law Review*, Vol. 2, pp. 51 –63; LRC, note 302 above, at p. 10.
307. European Council Directive 2000/03/EC of June 29 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, at article 7. While the Irish Human Rights Commission has the power to take cases on behalf of individuals and groups, it has been unable to exercise this power because of resource constraints.
308. See Eide, reported in Virginia Dandan, Report of the Expert Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices, Geneva, 16-18 February 2000 at para. 27. Dandan reports that Asbjørn Eide "stated his view that one of the most fundamental issues was whether the judiciary, law enforcement agencies, and - where they existed - ombudspersons, human rights commissions and other public bodies - were genuinely impartial. He concluded that the record was mixed at best and that a pervasive problem was that the police and other security forces were often biased".
309. Note 6 above, at para.17.
310. Bridges, "Race, law and the State" (2001) in *Race and Class* vol. 43, no. 2, pp. 61-76, at p.63 for a discussion of 'stop and search' policies in the United Kingdom.
311. *The Stephen Lawrence Inquiry Report* (1999).
312. See Section 2.5 of Part I of this report
313. This view was also expressed in Philip Watt, Director of the NCCRI, in an interview with the research team, 09.02.2005.
314. While the Gardaí have officially adopted the Macpherson definition of a racist incident as its working definition, significant doubt exists concerning the extent to which this definition is relied upon in practice. The findings of Amnesty International's 2001 survey in relation to the Gardaí's response to racist incidents suggest that this definition does not govern the way in which the Gardaí deal with racist crime in practice. See An Garda Síochána (2003), *Your Police Service in Intercultural Ireland* at p. 11; Loyal, and Mulcahy (2001), *Racism in Ireland: The Views of Black and Ethnic Minorities* Amnesty International – Irish Section, at p. 5.
315. Reilly, "Conflict of Interest' for Ethnic Liaison Officers", November 2004, *Metro Eireann*, at p.1. The lack of awareness as to who had the role of Ethnic Liaison Officer within the majority of Garda stations surveyed by Metro Eireann indicated the marginalisation of anti-racism within the police force. Moreover, the fact that the same survey found that many people from black and ethnic minority groups were referred to immigration officers instead of ethnic liaison officers and that many ethnic liaison officers were performing the conflicting role of immigration officers indicates a serious misunderstanding, throughout the ranks of the Gardaí, of the ethical standards which should define the role of ethnic liaison officer in order to inspire confidence in the role of the part of people from black and ethnic minority groups.
316. In response to illegal dumping in the Finglas area of Dublin, the City Council erected a barrier in the middle of the night blocking access to Finglas village for over 400 Traveller residents of Dunsink Lane. While representatives of the Traveller Community acknowledged and condemned serious incidents which took place, the fact that the whole community was stigmatised by the anti-social behaviour of a few may be clearly seen in the arrest of Human Rights Commissioner and Assistant Director of Pavee Point Martin Collins, while taking part in a peaceful protest against the barrier. Additional disproportionate actions by the Gardaí around the time of the erection of this barrier include the establishment of a 24 hour Garda checkpoint at Dunsink lane and the deployment of 200 Gardaí in a raid of the area. "Such actions only serve to create a climate of fear, suspicion and mistrust. It will take years of hard work to repair the damage to Garda-Traveller relations in the area". Pavee Point, 07.10.2004, "Traveller Representatives from Dunsink Lane meet with City Councillors", Pavee Point, 12.10.2004.
317. Following this Operation, the NCCRI received a number of complaints from individuals and representatives of minority ethnic communities that Gardaí in some areas were simply stopping people from black and ethnic minority groups in the street "randomly and without evidence" and asking them for identification and their residence permits. The NCCRI notes that "a significant number" of people who were questioned by the Gardaí were legally entitled to be in Ireland. NCCRI, 03.02.2004, "Submission to the Department of Justice, Equality and Law Reform on the Immigration Bill 2004", at p.2. It is important to note in the context of this discussion that unlike other European Member States apart from the U.K, individuals residing in the State are not obliged to carry identification with them at all times
318. Ionann Management Consultants (2004), *An Garda Síochána: Human Rights Audit*, at p.96

319. An Garda Síochána, *Policing Plan 2005*, at Strategic Goal no. 6: "Ethnic and Cultural Diversity"; "To build the capacity of An Garda Síochána to fulfil the emerging policing needs of diverse ethnic and multicultural communities"
320. Interview with DJELR, 18.04.2005
321. The Department of Justice, Equality and Law Reform, *Planning for Diversity: The National Action Plan against Racism (2005)*, at p.79
322. "Initiatives undertaken to increase the accessibility of the Gardaí to people from black and minority ethnic groups include the proposed removal of Irish language entry requirement to the Garda Training College. Additionally, the organisation has committed itself to the identification of hidden barriers to joining the Gardaí for people from black and minority ethnic groups." Address by the Minister for Justice, Equality and Law Reform at the Garda Graduation Ceremony in the Garda College, Templemore, 14.10.2005. See the Rotterdam Charter (www.rotterdamcharter.nl) which covers five different topics: Recruitment and retention; Training of police officers; The implementation of anti-discrimination law; Building bridges between ethnic minorities and police; and Migrant participation in crime versus police participation in criminalising migrants.
323. NGO Alliance, note 64 above, at p. 41; see also Section 3.4 of Part I of this Report.
324. Garda Síochána Act, 2005, at section 3.
325. NGO Alliance, note 64 above,, at p. 41.
326. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N Doc. CERD/C/IRL/CO/2, at para.17
327. See Irish Penal Reform Trust (IPRN), Research Brief: Sentencing in the District Courts, 2003", Penal Reform News, Issue number 22- Winter 2004/5, see also Tanya Ward (2005), *The Judiciary and Human Rights*, Irish Council for Civil Liberties, Publication forthcoming.
328. See Primetime Investigates the District Court, 13.12.2004, RTE 1
329. ITM, *Strategic Plan for the Irish Traveller Movement Legal Unit*, at goal 3.
330. In her concluding statement at a conference, Dr Ronit Lentin applauded the commitments of groups such as Residents against Racism, who act as Court observers, Conference on Race and State, Trinity College Dunlin, 31.03.2005.
331. See Alana Lentin, *Racism and Anti-Racism in Europe*, (2004), Pluto Press, London, at p. 275, 280.
332. See Irish Centre for Human Rights, 25.02.2003, "Judges' Apologies for Racist Comments not Satisfactory says Irish Centre for Human Rights". The fact that judges may have faced an internal disciplinary procedure, but no details of such a process, if indeed any did occur, were made public, is not satisfactory. The independence of judges should not act as a cloak over their lack of public accountability for statements they might make in their courts, which are public institutions. There is a need for greater transparency within the judicial system in order to ensure the effectiveness of human rights and anti-racism training. While judges undergo a certain amount of awareness raising relating to racism, there is no information available in the public domain detailing the nature of this training, how widespread it is or follow-on evaluation on the impact of this training. See Section 2.2 of Part II of this report for details of these racist incidents.
333. For a general overview of the impact of ethnicity, culture and gender on sentencing, see chapter 8.
334. Irish Prison Service Annual Report 2004 (2005), Irish Prison Service.
335. Irish Prison Service Annual Report 2003 (2004), Irish Prison Service
336. Note 334 above.
337. Note 6 above, at para. 15.
338. Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 28 May 2002, CPT/Inf (2003) 36, published on 18 September 2003.
339. Kelly (2005), *Immigration-related detention in Ireland: A research report for the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland*
340. Linehan, Duffy, O'Neill, O'Neill and Kennedy (2002), 'Irish Travellers and forensic mental health', *Ir. J. Psych. Med.* 19(3).
341. *Research and Training Project for Intercultural Awareness Conducted in Wheatfield Prison 2002*, Report prepared for The Irish Prison Service by Fitzpatrick Associates and National Training and Development Institute. That this study was being undertaken was the official reason given to Amnesty International (Irish Section) and the Irish Penal Reform Trust (IPRT), for the DJELR's denying them access to Irish prisons to carry out research on racism in 2002.

342. Concluding observations of the Human Rights Committee: Ireland. 24/07/2000, A/55/40, paras.422-451.
343. Note 338 above.
344. DJELR, "Appeals Procedure", [http://www.justice.ie/80256E01003A21A5/vWeb/flJUSQ673KQ5-en/\\$File/appeals.pdf](http://www.justice.ie/80256E01003A21A5/vWeb/flJUSQ673KQ5-en/$File/appeals.pdf), consulted 09.05.2005.
345. Note 6 above, at para. 24.
346. Section 3.3.
347. *Submission to the Department of Justice, Equality and Law Reform on the Immigration Bill 2004*, at p.2, note also IHRC also called for training
348. Note 6 above, at para.16.
349. Interview DJELR, 18.04.2005.
350. Fanning, O'Connor and Veale (2001), *Beyond the Pale: Asylum Seeking Children and Social Exclusion in Ireland*, Irish Refugee Council, Combat Poverty Agency, at p. 4.
351. Irish Refugee Council (2001), *Policy Recommendations on Regional Reception of Asylum Seekers in Ireland* at p.12
352. O Mahony, note 196 above, at p.134; Free Legal Advice Centres (FLAC) report (2003), *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland* at p.40.
353. Refugee Act 1996; number 7 of 1996, as amended by section 11(1) of the Immigration Act 1999, section 9 of the Illegal Immigrants (Trafficking) Act 2000 and section 7 of the Immigration Act 2003, a section 3(2)(a)(i): Only asylum seekers, who have been formally recognised as refugees have the right to work. Section 3(2)(a)(i) reads: Without prejudice to the generality of subsection (1), a refugee in relation to whom a declaration is in force- (i) shall be entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen"
354. www.ria.gov.ie/the_asylum_process/_reception_and_dispersal, consulted 25.08.2004
355. Department of Justice, Equality and Law Reform: Reception and Integration Agency (2003), "Accommodation Centre Services, Rules and Procedures", at p. 2.
356. Comhairle (2004), "Pre-Budget Submission 2005".
357. Free Legal Advice Centres (FLAC) (2003), *Direct Discrimination? An Analysis of the Scheme of Direct Provision in Ireland* at p.40. To compound this inequality, their social welfare benefits are calculated according to their particular needs, whereas asylum seekers receive a 'blanket' payment. While, asylum seekers used to be entitled to other payments such as child benefit and disability allowance at a reduced rate, the introduction of 'the Habitual Residency Test' in May 2004 made asylum seekers ineligible for these benefits. See also Comhairle (2004), "Pre-Budget Submission 2005".
358. The location of hostels in isolated locations also leads to difficulties in accessing services such as the legal advice and language classes. See O' Mahony, note 196 above, at p.136-7.
359. Fanning, O'Connor and Veale (2001), *Beyond the Pale: Asylum Seeking Children and Social Exclusion in Ireland*, Irish Refugee Council, Combat Poverty Agency, at p.4, 35-38. This study found that even though 92% of asylum seekers within the Direct Provision system surveyed, maintained that it was necessary to purchase supplementary foodstuffs in order to substitute their needs and the needs of their families, 62% of respondents could not afford to do so.
360. Irish Refugee Council (2001), *Policy Recommendations on Regional Reception of Asylum Seekers in Ireland* at p. 11.
361. Comhairle (2004), "Pre-Budget Submission 2005".
362. See Combat Poverty Agency (2004), "Living in Ireland: The Facts 2001".
363. *Gueye v. France* (1985), Human Rights Committee, no. 196/1985. See Section 3.1.1 of Part I of this report for a brief discussion of this case. See also Cholewinski "Economic and Social Rights of Refugees and Asylum Seekers in Europe", (2000), Georgetown Immigration Law Journal, vol. 14, pp. 709-756, at p.715.
364. FLAC, note 357 above, at p. 39: "The decision to introduce the scheme was based on a policy of deterrence rather than any attempt to address the needs of as a class or individuals". See also O' Mahony, note 196 above, at p. 133.
365. See O' Mahony, note 196 above, at p. 133; Fanning, O'Connor and Veale, note 359 above, at p. 25.
366. European Council on Refugees and Exiles, Summary of ECRE's position on Access to the Labour Market for Asylum Seekers, <http://www.ecre.org/statements/labour.shtml>, consulted 29.04.2005 "Access to the labour market should be granted for asylum seekers and their families no more than six months after the application for asylum has been lodged".
367. See Irish Refugee Council (2001), *Policy Recommendations on Regional Reception of Asylum Seekers in Ireland*, at p.11 on the lack of consistency within the system.

368. Irish Refugee Council (2001), *Policy Recommendations on Regional Reception of Asylum Seekers in Ireland* at p.4. The Refugee and Asylum support unit at the Irish Centre for Human Rights has been engaged in providing classes on refugee and human rights law to undergraduate and postgraduate law students, with the aim of producing a pool of trained volunteers available to agencies who work with asylum seekers and refugees in the State. It is hoped that this initiative will help safeguard the rights and well-being of asylum seekers.
369. National Consultative Committee on Racism and Interculturalism (NCCRI) Progress Report 2002 – 2004 and Strategy Statement 2005 – 2007., at p. 33.
370. According to RIA's "Accommodation Centre Services, Rules and Procedures", residents should bring complaints or problematic issues to the attention of the Manager of the accommodation centre. While RIA will get involved "in exceptional circumstances", it may, upon examination of the complaint, refer the matter to the accommodation manager at local level.
371. See Carol Coulter "Two Barristers resign from Refugee Appeals Body", *The Irish Times* 03.02.2006
372. See Catherine Kenny (2003), *Asylum in Ireland: The Appeal Stage – A Report on the Fairness and Sustainability of Refugee Determination at Appeals Stage*
373. For instance, Amnesty International has previously concluded that the Department has also failed to live up to its duties in respect of equality for women, note 73 above.
374. This concern about the Minister of State's equality brief extends beyond that vis-à-vis minority ethnic groups. See for instance concerns in relation to this office's role in relation to violence against women contained in Justice & Accountability: Stop Violence Against Women (2005), Amnesty International (Irish section). This report also suggests that the Department of Justice, Equality and Law Reform has not adequately performed its stated function of centrally monitoring and coordinating all relevant departments' individual roles, responsibilities and budgets for addressing violence against women.
375. Patsy McGarry, "McDowell says inequality an incentive in the economy", *Irish Times*, 28.05.2004.
376. Ibid.
377. Irish Human Rights Commission (2005), *Annual Report 2004*. It is important to point out that the DJELR routinely chooses not to accede to the IHRC's advice given upon these referrals.
378. <http://www.entemp.ie/mission.htm>, consulted 07.04.2005.
379. UDHR, at Art. 23, ICESCR, at Art. 7. The European Council on Refugees and Exile (ECRE) states that work constitutes a "key factor in the integration process" [The European Council on Refugees and Exile, (1999), *ECRE Position Paper on the Integration of Refugees in Europe* para. 17]. In recognition of this the European Employment Strategy is very mindful of the importance of employment as a means of combating social exclusion of asylum seekers. [DJELR, *Planning for Diversity: The National Action Plan against Racism* (2005), at p. 62]
380. ICESCR, at art. 7.
381. ICESCR, at article 11.1.
382. ICESCR, at article 12.1. Article 12.1 reads: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health"
383. See Scott, "Reaching Beyond (Without Abandoning) the Category of Economic, Social and Cultural Rights" (1999), *Human Rights Quarterly*, vol. 21.3, pp. 633-660 on the interdependence of all human rights.
384. Interview with DETE, 14.04.2005.
385. Ibid.
386. DETE (2003) *National Employment Action Plan*, at p. 28.
387. See DETE (2003) *National Employment Action Plan*, at p.4.
388. For more details on the range of initiative undertaken by the DETE, see First National Report by Ireland to the Committee on Elimination of Racial Discrimination (2004), Government Publications, Dublin,, at annex, at paras. 20-23. Positive initiatives include the targeted recruitment of Travellers by the Civil Service. This scheme is aimed at "making employment in the Civil Service more attractive and accessible to members of the Travelling Community" and affirmative action for Travellers in terms of access to employment and training schemes [First Progress Report of the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community (2000), at p. 73-74].
389. Census 2002, cited in Pavee Point Travellers Centre (2005), *Shadow Report: Ireland's First and Second Report on CERD* at p. 35
390. Committee on the Elimination of Racial Discrimination, Summary Record of the 1688th meeting: Ireland 10.03.2005, UN Doc. CERD/C/SR/1688, at para. 34
391. The Irish Traveller Movement (ITM) (2005), *Shadow Report and Commentary on the First National Report*

- by Ireland to the CERD Committee, at p.8. The ITM has stated that targeted government initiatives aimed at addressing "the exclusion of the Travelling Community...fall[s] far short of addressing the reality for Travellers".
392. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N. Doc. CERD/C/IRL/CO/2, at para. 22.
393. Note 391 above, at p.33 The ITM credits deference to the community's traditional way of life, "fear of discrimination", and "poor education" for this preference for self-employment.
394. Pavee Point (2003), *Dismantling the Traveller Economy – A Case Study of the impact of increasing regulation on the Traveller Economy*.
395. Pavee Point *ibid*. See also ITM, note 391 above, at p.21-2; First progress report of the task force of the Traveller Community, at p. 19; ITM (2002), *End of the Road: Report of the Socio-Economic Consequences of the Control of Horses Act on the Traveller Economy*.
396. Note 391 above, at p. 21-2. The ITM points out that this "would have led to the introduction of measures to limit the impact on Travellers".
397. *Ibid*, at p. 22. The ITM laments "the impossibility of making real progress without mainstream commitment to culturally diverse economic development".
398. See Section 5.2 of Part I of this report.
399. Refugee Act, 1996 (as amended) provides that a refugee in relation to whom a declaration is in force shall be entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen.
400. Fanning and Loyal (2000), *Asylum Seekers and the Right to Work in Ireland* at p.44. Fanning and Loyal's report dealt with a very limited group of asylum seekers, who had applied for refugee status before July 26th 1999 and were granted the right to work, having been in the asylum process for over a year.
401. See DJELR, *Planning for Diversity: The National Action Plan against Racism* (2005), at p. 95.
402. Note 400 above, at p.47.
403. Note 400 above, at p.47.
404. Fanning and Loyal found that confusion amongst employers as to whether asylum seekers were legally entitled to work constituted a barrier to employment for asylum seekers with the right to work. Bryan Fanning and Stephen Loyal (2000), *Asylum Seekers and the Right to Work in Ireland* at p.43
405. Interview with DETE, 14.04.2005. "The Employment Equality Acts 1998 prohibits discrimination on the nine specific grounds set out below in all aspects of a person's employment from: Access to employment, Conditions of employment, Training or experience, Promotion or regarding, Classification of posts, Vocational training, Equal Pay (It may also apply in certain circumstances when the relationship has ended for example to references)". Equality Authority (2002), *Code of Practice on Sexual Harassment and Harassment at Work*, at p.5
406. Interview with DETE, 14.04.2005
407. Immigrant Council Of Ireland (Labour Migration into Ireland, at p. 32. "As the employer effectively controls the employment permit the worker is not fully free to sell his or her labour in the marketplace and may feel intimidated about making any complaints about such grievances."
408. Mary Robinson, cited in Carl O'Brien, "Green card system planned for skilled workers", 12.02.2005, *Irish Times*
409. *Briefing Note 2 on the Employment Permit Bill 2005: Recommended Amendments for Committee Stage of Debate* (2005).
410. Note 6 above, at para. 14: "The Committee, recalling its General Recommendation XXX on discrimination against non-citizens, encourages the State party to ensure full practical implementation of legislation prohibiting discrimination in employment and in the labour market. In this context the State party could also consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees"
411. Note 6 above, at para.23.
412. Vision 21 consultation.
413. First Progress Report of the Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Traveller Community (2000), at p.75
414. See Migrants Rights Centre of Ireland (2004), *Private Homes – A Public Concern; The Experience of Twenty Migrant Women Employed in the Private Home in Ireland*.
415. ICESCR, at art. 12.1 Article 12.1 reads: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

416. See for example Health Service Employers Agency (2004), *An Equal Opportunities/Diversity Policy and Strategy Objectives for the Health Service* and Health Service Employers Agency (2004), *Dignity at Work Policy for the Health Service*.
417. See the National Consultative Committee on Racism and Interculturalism (NCCRI) and the Irish Health Service Management Institute (IHSMI) (2002), *Cultural Diversity in the Irish Health Care Sector: Towards the Development of Policy and Practice Guidelines for Organisations in the Health Sector* at p. 17
418. See Section 5.2.3 of Part I of this report
419. Interview with HSEA, 14.04.2005
420. Ibid.
421. Telephone Conversation, Fintan Hourihan, Irish Medical Organisation, 19.04.2005.
422. Birchard, "Ireland's doctors tackle institutional racism", 10.05.2001, *The Lancet*.
423. Interview with HSEA, 14.04.2005
424. Note 421 above.
425. Ibid.
426. See Section 2.2 of Part I of this report for a discussion of Ireland's obligations under article 2 of ICERD.
427. Interview with HSEA, 14.04.2005.
428. Irish Nurses Organisation: Education, <http://www.ino.ie/DesktopModules/Articles/ArticlesView.aspx?TabID=281&ItemID=537&mid=7367>, consulted 12.04.2005
429. Interview with HSEA, 14.04.2005.
430. Protection of Employees (Fixed Term Work) Act 2003, number 29 of 2003
431. *Chalikonda V.R Prasad v. Merlin Park Regional Hospital*, FT18182/04/JC, Labour Relations Commission, 10.03.2005, See also McDonald, "Indian Surgeon wins €80,000 over loss of contract job", 20.03.2005, *The Times*.
432. Interview with HSEA, 14.04.2005.
433. www.ino.ie/DesktopModules/Articles/ArticlesView.aspx?TabID=281&ItemID=531&mid=7367, consulted 12.04.2005. "Under the current system of interviewing, many nurses have expressed the view that the marking system is unfair. The belief is fuelled by the fact that some candidates with less qualifications and general experience have been successful at interview by virtue of the fact that they have been awarded higher marks under the heading of 'general suitability'. The perception among many nurses is that favouritism persists".
434. Naqvi, "Bullying is a major source of breakdown, stress, malfunction in the healthcare system", 03.12.2004, *Irish Medical Times*, See also Overseas Medics of Ireland web-site: <http://altafnaqvi.tripod.com/news.htm>, consulted 13.04.2005
435. Interview with HSEA, 14.04.2005
436. Caoimhe Gleeson, Equality Officer, North Western Health Board, "Equal Status Reviews a tool for advancing equality in service delivery", Presented at the *Conference Closing the Gap: Systematic Approaches to Promoting Equality and Diversity* 27 –28 May 2004, North Western Health Board, Anti-Racist Code of Practice, Equality Authority (2003), Annual Report, pp.61-64
437. Department of Health and Children, *Traveller Health, A National Strategy 2003 –2005*. See also Pavee Point Travellers Centre, National Traveller Health Strategy 2002, www.paveepoint.ie/National_health_strategy.htm, consulted 13.04.2005
438. See The Health Community Impact Project, <http://www.cairde.ie/hci.htm>, consulted 03.05.2005 and the Women's Health Action Programme, <http://www.cairde.ie/wha.htm>, 03.05.2005, by Cairde. Mission Statement: "Cairde is a non-governmental organisation working to reduce health inequalities among ethnic minorities. Cairde is committed to supporting the participation of communities to enhance their own health."
439. For example the life expectancy of people from the Traveller Community is much lower than the national average. High infant mortality is particularly common, for example, the rate of sudden infant death syndrome in the Traveller Community is 12 times the national average. Other problems such as accommodation linked to poor Traveller health status. The need for close co-operation between the Department of Environment and Local Government in order to combat ill health as a result of poor housing conditions is highlighted as a part of the Traveller Health Strategy [http://www.shb.ie/content-1454814638_1.cfm, consulted 06.12.2004]. As discussed in relation to the Direct Provision system asylum seekers experience particular health problems, as a result of their living conditions, particularly as a result of stress and their diet. Additionally, asylum seekers may experience mental health problems as a result of trauma they have suffered before coming to Ireland. See Deborah Condon, "Asylum Seekers suffer Poor

- Mental Health", irishhealth.com, at <http://www.irishhealth.com/?level=4&tid=4440>, consulted 03.05.2005
440. Vision 21
441. ICERD, at article 3, See Section 2.3 of Part I of this Report
442. Vision 21, see also NGO Alliance (2004), *In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination*, at p. 54
443. According to the Centre for the Care of the Survivors of Torture, most of their clients are located outside of the greater Dublin area, see www.ccst.ie/statistics.html, consulted 13.04.2005
444. Jim Clarke, "Healthcare for refugees", irishhealth.com, <http://www.irishhealth.com/index.html?level=4&tid=2384&ess=Jim%20Clarke%20Healthcare%20for%20refugees>, consulted 03.05.2005. The Eastern Health Authority informed Irishhealth.com that health workers were made aware of the service. However, practice on the ground seems to indicate that there is a problem with the way in which this information is disseminated. The HSEA were confident that information about translation services was adequately disseminated and that these services were relied upon in practice by healthcare professionals. Interview with the HSEA, 14.04.2005. The HSE is committed to developing an interpretation service for the health service including general practice. A free interpretation service is available to GPs with GMS contracts within the HSE Eastern region from 1st September 2005, which is planned to roll out nationally if found to be successful. In 2005, the Multicultural Health project of the Irish College of General Practitioners published a guide to the use of interpretation services and cultural competency, *General Practice Care in a Multicultural Society: A Guide to Interpretation Services & Cultural Competency* as a support to GPs.
445. *Refugee Health Care: A Handbook for Health Professionals*, <http://www.asylumsupport.info/publications/mohnewzealand/handbook/healthcare.htm>
446. Toon Machiels, "Special education facilities for pupils of Roma, Sinti, Travellers, 15.06.2004, Paper presented at conference organised by the Irish Association of Teachers in Special Education (IATSE) entitled "Teaching in a Time of Change"
447. Brian E. Titley, *Church, State and the control of Schooling in Ireland 1900-1944* (1993), Mc Gill-Queen's University Press, Kingston and Montreal, at p. x
448. Interview with the Department of Education and Science, 07.03.2005
449. Interview with the Department of Education and Science, 07.03.2005
450. NGO Alliance, note 64 above, at p. 57. For example while the Department's 1993 *Guidelines on Countering Bullying Behaviour in Primary and Post-Primary Schools* acknowledges that bullying may take the form of "negative comments about a pupil's appearance or background", no specific mention of racist bullying is made.
451. Interview with Department of Education and Science, 07.03.2005
452. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N. Doc. CERD/C/IRL/CO/2., at para. 18
453. Patsy McGarry, "Parent leaves school board over school policy" 19.12.2002, *Irish Times*. Under Ireland's equality legislation, preference may legally be given to children of the school's denomination regardless of whether they are from the school's catchment area or not.
454. Equal Status Act 2000 and 2004, number 8 of 2000 and number 24 of 2004. Section 7 (3) states that "an educational establishment does not discriminate under subsection (2) by reason only that – (c) where the establishment is a school providing primary or post-primary education and the objective of the school is to provide education which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school".
455. Department of Education: Primary Schools Statistical Database 2002
456. See Section 2.1 of Part I of this report for a discussion on the different forms that racial discrimination may take.
457. General Comment 13, General Comment no. 13, "The Right to Education" (art 13 of the Covenant on Economic, Social and Cultural Rights), adopted by the Committee on Economic, Social and Cultural Rights during its twenty-first session, (1999), para. 47.
458. Educate Together, a non-governmental organisation, which assists parents in the establishment of multi-denominational schools is motivated by the aim that families should not have to travel more than thirty minutes in order to reach a school where their child can receive an education in according to their parent's conscience. Educate Together (2005), *Shadow Report by Educate Together on the First Report to*

- the United Nations Committee on the Convention on the Elimination of all Forms of Racial Discrimination by Ireland*, at p. 6
459. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, Ireland (2005), U.N. Doc. CERD/C/IRL/CO/2,, at para. 18
460. Mairin Kenny and Michael Shevlin, "Traveller Community" (2004) in Anne Lodge and Kathleen Lynch (eds.), *Diversity at School*, Equality Authority: Dublin, pp.92-101, at p. 93
461. Mairin Kenny and Michael Shevlin, "Traveller Community" (2004) in Anne Lodge and Kathleen Lynch (eds.), *Diversity at School*, Equality Authority: Dublin, pp.92-101, at p. 94
462. The Human Rights Commission has classified this exemption as "an unjustified erosion of existing equality protections in the area of access to education". Furthermore, the Equality tribunal had ruled that such a restriction was discriminatory in 2003, Equality Officer Decision DES-S2003-042/043.
463. See NGO Alliance, note 64 above, at p. 56.
464. Clarke and Malone, "Religious Belief" (2004), Lodge and Lynch (eds.), *Diversity at School*, Equality Authority: Dublin, pp.45-62, at p.53.
465. NCCRI (2004), *Submission to the Education Disadvantage Committee to assist development of a Traveller Education Strategy*, at p. 3
466. See Fanning (2002), *Racism and Social Change in the Republic of Ireland* Manchester University Press, Manchester and New York, at p. 98
467. Maxwell (2003), *Current Implementation of Intercultural Educational Policy in Irish Primary Schools* Thesis Submitted in partial fulfilment of the requirements for the Masters in Education, Joint Faculty of Education, St. Patrick's College, Dublin City University (unpublished), at p. 54.
468. NGO Alliance, note 64 above, at p.54.
469. Irish Association of Teachers in Special Education (IATSE) (2001), *Education for a Pluralist Society: The Direction of Intercultural Education*, at p. 7.
470. Alternatively, as Margaret Maxwell points out in her interesting inquiry into intercultural education in Ireland, various schools have implemented innovative initiatives, aimed at valuing migrant children's mother tongues in other ways. See Margaret Maxwell (2003), *Current Implementation of Intercultural Educational Policy in Irish Primary Schools* Thesis Submitted in partial fulfilment of the requirements for the Masters in Education, Joint Faculty of Education, St. Patrick's College, Dublin City University (unpublished), at p.58
471. Department of Education and Science (2002), *Guidelines on Traveller Education in Second-Level Schools* NGO Alliance (2004), *In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* at p.57
472. NGO Alliance (2004), *In Response to the Irish Government's First National Report to CERD under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination* at p.55
473. Interview with the Department of Education and Science, 07.03.2005

Conclusions and Recommendations

We propose the following as a working definition of institutional racism vis-à-vis international human rights law:

"Laws, policies or practices of the State or institutions of the State, which have a disproportionate negative impact, or, in the absence of data to assess their impact, potential disproportionate negative impact, on persons from minority ethnic groups, or fail to provide equal benefit to persons from minority ethnic groups, whether resulting from an act or omission, where the State and its institutions are under an obligation arising from international human rights law."



Children at the launch of 'Know Racism', the National Anti-Racism Awareness Programme, with Taoiseach Bertie Ahern at Government Buildings, Dublin in 2001
© Gareth Chaney/Photocall Ireland

There is a widespread need for in-depth research into institutional racism in Ireland. While this report has only focused on four government departments, there are others which arguably merit equal attention. These include the Department of Social and Family Affairs, particularly for its role as the lead department in the implementation of the National Anti-Poverty Strategy and the Department of Environment and Local Government, which has responsibility for the implementation of Traveller Accommodation Programmes. The State should take responsibility for this investigation. All government departments and State bodies must undergo a human rights audit, in order to ensure the compatibility of the services they provide to people from black and minority ethnic groups with articles 2 and 5 of ICERD. While the National Action Plan stresses the importance of accommodating diversity at the design stage of policies and

programmes,⁴⁷⁴ this cannot be achieved without first calling into question the assumptions and practices, which currently mould the drafting and implementation of policy at the level of the State and its institutions. The objectives of such an audit should be two-fold, encompassing the policies and practices of the State as both an employer and a service provider.

There can be no doubt that the State has the infrastructure in place in order to facilitate such an audit across the board, as the frequent reference to the initiatives of the Equality Authority in this report's exploration of examples of good practice have shown. Therefore doubts concerning the State's ability to tackle the issue of institutional racism in Ireland, arise not as a result of a lack of expertise, in the bodies charged with special responsibility for human rights and anti-racism, the non- governmental sector and indeed within individual government departments, but in the government's lack of political will to even acknowledge the extent and gravity of the problem.

As Macpherson has pointed out, "there must be an unequivocal acceptance of institutional racism and its nature before it can be addressed".⁴⁷⁵ An Garda Síochána stands alone in its drafting of an action plan in response to the findings of an independent human rights audit, which found that "procedures and operating practices within the force could lead to institutional racism".⁴⁷⁶ When contrasted with existing approaches to anti-racism within government departments, this response highlights the inadequacy of other approaches, based on respect for diversity and multiculturalism when it comes to tackling institutional racism. As Sivanandan said of the appropriateness of multiculturalism as a means of tackling racism: "People do not need to be given their cultures, only their rights"⁴⁷⁷. It is time for the government to stop setting up the good work that has already been done as the point of arrival and to set about seriously tackling the issue.

There is a need for cross-departmental action in order to tackle the identification and elimination of racism at the level of the State and its institutions. It is hoped that the steering Committee of the National Action Plan against Racism shall take cognisance of this report and incorporate its findings and recommendations into its work programme. Moreover, it is hoped that the Committee will be given adequate resources and that its findings and recommendations will be given adequate weight in order to ensure that they provide for the effective enjoyment to the right to freedom from racial discrimination

In order for anti-racism to become standard practice, it must be mainstreamed. Anti-racism must become a priority under the National Development Plan in the same way as gender. It therefore follows that government departments and State bodies will be required to ensure that their policies and practices do not have a disproportionate negative impact on people from minority ethnic groups. Furthermore, the State must ensure that policies and practices include special measures, in the form of both affirmative action and 'reasonable accommodation of diversity' so that government departments and State bodies respect, protect and fulfil the right to freedom from racial discrimination. For this duty to be realised, the duty to mainstream human rights and anti-racism must be underpinned by effective legislation.

Moreover, in order to ensure the effective mainstreaming of anti-racism within government departments and State bodies, it is an absolute necessity that leadership, training, the establishment of indicators and procedures for accountability support this initiative. Responsibility for mainstreaming anti-racism and human rights must be given to members of

"Joining together in a spirit of renewed political will and commitment to universal equality, justice and dignity, we salute the memory of all victims of racism, racial discrimination, xenophobia and related intolerance all over the world and solemnly adopt the Durban Declaration and Programme of Action."

Durban Declaration and Programme of Action, WCAR, 2001

“What we have heard from the victims of racism is essentially a cry for help. We should not turn away because we may not like how it sounds, no matter how unpleasant. Governments have a duty to listen and to act, and to do so with a renewed sense of urgency.”

Amnesty International press release 2001 on the adoption of a Declaration and Programme of Action at the World Conference Against Racism

senior management in key government departments in order to guarantee the centrality of anti-racism to the department's approach. Additionally, this allocation of responsibility for anti-racism will increase accountability for the perpetuation of institutional racism through omission of neglect.

A human rights audit, which includes the collection of data detailing the impact of current policies and practices on people from minority ethnic groups must constitute the point of departure for such a policy. The mainstreaming of human rights and anti-racism training for all state and institutional personnel is absolutely essential in order to ensure the effectiveness of an overreaching anti-racism policy. This training should include the dissemination of a working understanding of institutional racism through the examination of examples of good and bad practice. In addition to seeking to challenge the attitudes and stereotypes, this training should inform employees of the State's obligations under international law. The provision of human rights and anti-racism training to the people responsible for the drafting and implementation of government policy will greatly enhance accountability for the disproportionate negative impact of policies and practices of people from minority ethnic groups.

As with all of the initiatives that come under the aegis of anti-racism mainstreaming, the outcomes of any anti-racism training undertaken by government departments must be evaluated in order to ascertain its impact. The findings of such an evaluation must be reflected in the next phase of the initiative in order to improve its effectiveness.

The influence of a poor human rights culture on the enjoyment of human rights can particularly be seen in the popular misconception of the relationship between citizenship and human rights. Even though all human beings are entitled to human rights as a result of the inherent dignity of the person or the value that is placed on human life,⁴⁷⁸ the assumption persists in society that citizens or nationals are more entitled to human rights than non-citizens or non-nationals.⁴⁷⁹ In her recommendations to the Commission on Human Rights, the UN Special Rapporteur on education, Katarina Tomasevski, notes that citizenship education may actually contribute to racial prejudice, rather than work towards dismantling it as it fosters the association between human rights and citizenship of a particular nation, rather than human rights and the inherent dignity of mankind.⁴⁸⁰

In addition to creating legal uncertainty regarding the human rights of the growing number of non-Irish citizens who shall be affected by it, this Constitutional amendment on citizenship (see Section 2.1.2 above), also risked reducing non-citizen's enjoyment of human rights at a de facto level by "legitimising negative attitudes towards foreigners."⁴⁸¹ The importance of attitudinal factors in guaranteeing effective human rights protection should not be underestimated. Apart from Constitutional and legislative guarantees, the effectiveness of human rights in a particular jurisdiction depends on the existence of a general human rights culture.⁴⁸²

Training on the norms and principles of human rights, including in relation to racial discrimination, should be a mainstream component of all pre- and in-service training for all state officials - the judiciary, Gardaí, Prison staff, health professionals, public service providers, etc. - and for government-funded non-state bodies to which government delegates its responsibilities. Moreover, such training should be mandatory for all government officials, especially those engaged in law-, policy- or decision-making. (See Part 1, Section 3.6, above on human rights training.) Furthermore, human rights education should be a core component of

the education system so that Irish society is imbued with an awareness and appreciation of human rights, and the ability to apply these principles in practice.

Footnotes

474. DJELR, *Planning for Diversity: The National Action Plan against Racism*(2005) at p.27.
475. *The Stephen Lawrence Inquiry* at Chapter 6, at para. 6.48
476. Interview with DJELR, 18.04.2005
477. Sivanandan, "Poverty is the New Black" (2001), *Race and Class* 43, no. 2, pp. 1-5.
478. Schachter, "Human Dignity as a normative concept" (1983), *American Journal of International Law*, vol. 77, pp. 848-854, at p. 848.
479. Bustamante. Working Paper prepared by the Chairman/Rapporteur of the working group of intergovernmental experts on the human rights of migrants (1998), U.N Doc. E/CN.4/AC.46/1998.5e , at para. 40
480. Tomasevski: Special Rapporteur of the Commission on Human Rights on the right to education, "Five necessary steps to eliminate racism and xenophobia in education, and through education" (2004), at step 2; see also Manfred Nowak,"The Right to Education" (2001) in A. Eide, A et al. *Economic, Social and Cultural Rights*, pp.245-271, particularly, at p.271.
481. Binchy "Citizenship and the International Remit of Constitutional Protection" (2004), in *The Citizenship Referendum: Implications for the Constitution and Human Rights* School of Law, Trinity College: Dublin, pp. 48-90, at p.57-62; J.M Kelly, Gerard Hogan, and Gerry White (1994), *The Irish Constitution*, Butterworths: Dublin, , at p. 48.
482. Heyns and Viljoen, "The Impact of the United Nations Human Rights Treaties on the Domestic Level" (2001), *Human Rights Quarterly*, vol. 23.3, pp. 483-535, at p. 484-5.

KEY RECOMMENDATIONS

RECOMMENDATION 1:

Acknowledge it!

The Government must acknowledge the inevitable fact of racism at the level of the state and its institutions. It must seek to understand and identify how racism operates at these levels. It must be forthright and open about what its responsibilities are, and the gap between this and what it is delivering.

RECOMMENDATION 2:

Adopt a cohesive mainstreaming strategy across all government departments and state bodies.

Anti-racism mainstreaming should be given at least the same attention as gender mainstreaming in government policy. Anti-racism mainstreaming should be firmly rooted in human rights and implemented with adequate safeguards including training and accountability, in order to ensure its effectiveness, in addition to its centrality to policy-making and practice. All services provided or funded by the state without exception should be obliged to review their availability, accessibility and appropriateness for minority ethnic groups, to introduce special measures to redress any imbalance in de facto inequality.

RECOMMENDATION 3:

Undertake human rights and anti-racism proofing

Human rights auditing of the impact of laws, policies and practices on people from minority ethnic groups must be the end game in the government's mainstreaming agenda. Human rights proofing should be mainstreamed across all government departments and state agencies, so that all laws, policies and practices are regularly and systematically reviewed for their actual or likely disproportionate impacts, both negative and positive, on minority ethnic groups, including along cross-cutting areas of discrimination.

RECOMMENDATION 4:

Adopt evidence-based policy-making through effective information systems

Data should be routinely collected and disaggregated, including on the basis of ethnicity, across all government departments and state agencies, in order to ensure that the comparative disadvantage of certain minority ethnic groups is not obscured or ignored. This data should be regularly analysed, and routinely used to inform law-, policy-, and decision-making. Community and voluntary services to whom government delegates its responsibility for delivering on its human rights commitments should be encouraged, supported and funded to collect, disaggregate and analyse data, and to adopt evidence-based policy-making.

RECOMMENDATION 5:

Adopt a working definition

The State should adopt a definition of institutional racism, and institutional discrimination more generally, which would be underpinned by legislation and widely disseminated to policy-makers and implementers.

RECOMMENDATION 6:

A Code of Practice

All state institutions, and especially those at particular risk of institutional racism such as the Gardaí and the judiciary, should have an enforceable code of practice. Enforceable codes of practice should also be set for non-state entities where relevant and appropriate, e.g. the media.

RECOMMENDATION 7:

Ensure the Effectiveness of Sanctions and Remedies

Take immediate action to review the effectiveness of sanctions for perpetrators and redress for victims in cases of racial discrimination. This should include measures to strengthen legislation and improve access to remedies, judicial or otherwise, in addition to measures taken at institutional level.

RECOMMENDATION 8:

Ensure that all state agents receive appropriate and effective Anti-racism and Human Rights Training

Widespread anti-racism training, which is firmly rooted in international human rights law and its underlying principles, is absolutely essential in order to ensure the effectiveness of any anti-racism measures which the State introduces at institutional level. This training should demonstrably raise awareness among policy-makers and implementers of the State's obligations under international law, change behaviours and outcomes, in addition to challenging stereotypes and misconceptions surrounding 'race' and ethnicity. It should be independently evaluated for its effectiveness periodically, and continually reviewed and revised.

RECOMMENDATION 9:

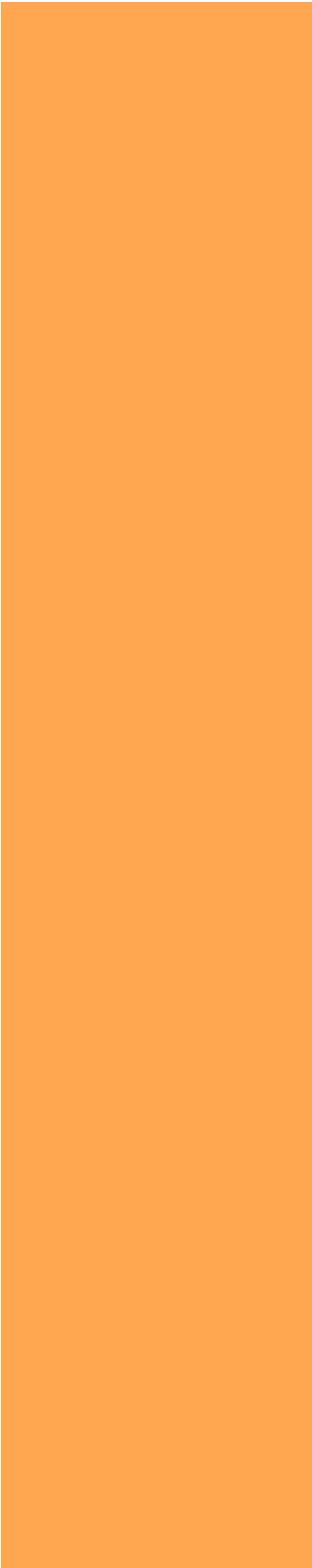
Targeted Recruitment by State

Special measures should be taken to recruit and retain members of minority ethnic communities to posts within state and quasi-state institutions, including at senior level. The adoption of special measures for their recruitment and retention should also generally be a condition imposed on non-state bodies to whom government allocates funding. Adequate safeguards should be put in place in order to ensure that people from minority ethnic groups are not being discriminated against, directly or indirectly, in access to or conditions of employment, or in attaining promotion.

RECOMMENDATION 10:

Establish Accountability at the Highest Level

The effectiveness of the State's anti-racism strategies must be measured. Where it a measure is not working, the State and the relevant institution must be held accountable at the highest level. The absence of data proving that a measure is not working cannot be allowed to suggest that it may be working - it must be interpreted as 1. a presumption that the measure is not working, and, hence racial discrimination at the level of the state and the institution, i.e. institutional racism, and 2. an additional breach on the part of the state and the institution of its duty to evaluate.



**RECOMMENDATION 11:
Establish a Department of Equality**

The Government should carefully consider removing the equality mandate from the Department of Justice, Equality and Law Reform, and establishing a separate Department with responsibility for the state's equality agenda. This new Department should be given all necessary powers and resources. Ideally, it would also be given a wider human rights mainstreaming responsibility. A top-down approach to human rights and anti-racism mainstreaming is essential, with a centrally located, effective, well-resourced and powerful Department, uncompromised by conflicting interests. It should coordinate and drive the state's equality agenda, and act as an equality watchdog for all other governments department, a champion for minority ethnic groups, and itself a model of best practice.

**RECOMMENDATION 12:
Provide for the meaningful and effective participation of minority ethnic communities in state decision-making processes.**

This should include the state's identifying and implementing innovative methods for resourcing, supporting and empowering minority-led NGOs, and through implementing concrete measures to ensure that they are equitably represented in local and national government. This is perhaps the most essential component of the state's agenda if it is to be serious about combating institutional racism.

Annex 1

The way forward

Recommendations from participants in Vision 2 1 consultation

Participants in the Vision 21 deliberative group were asked to consider solutions to issues and to think about developing the way forward. They offered a range of thoughtful and insightful solutions to issues that were discussed throughout the study. There were a range of suggestions and recommendations for action put forward by participants which were incorporated into the key recommendations in this report. They can be grouped across the following six themes:

1. Information services for minority ethnic communities

A key issue was access to information and knowledge in order to increase access to a wide range of services. Recommendations included better targeting of information to reach minority ethnic communities and production of the information in different languages. There appeared to be a specific need for more information around benefit entitlements and employment support.

2. Increasing cultural awareness in services

Participants spoke of the need for service providers and the government to increase awareness of cultural and religious needs of minority ethnic groups. Recommendations included consideration being given, particularly in hostels and health services to diet, appropriate behaviour and tolerance of cultural differences.

3. Reviewing policies and services

One of the most important steps which should be taken is for the government to recognise that institutional racism exists in Ireland. The groups were unanimous in their agreement that it was a feature of many institutions. They recommended that the government should make changes in mainstream services to take into account the views and needs of minority ethnic communities.

4. Anti-racism training/education

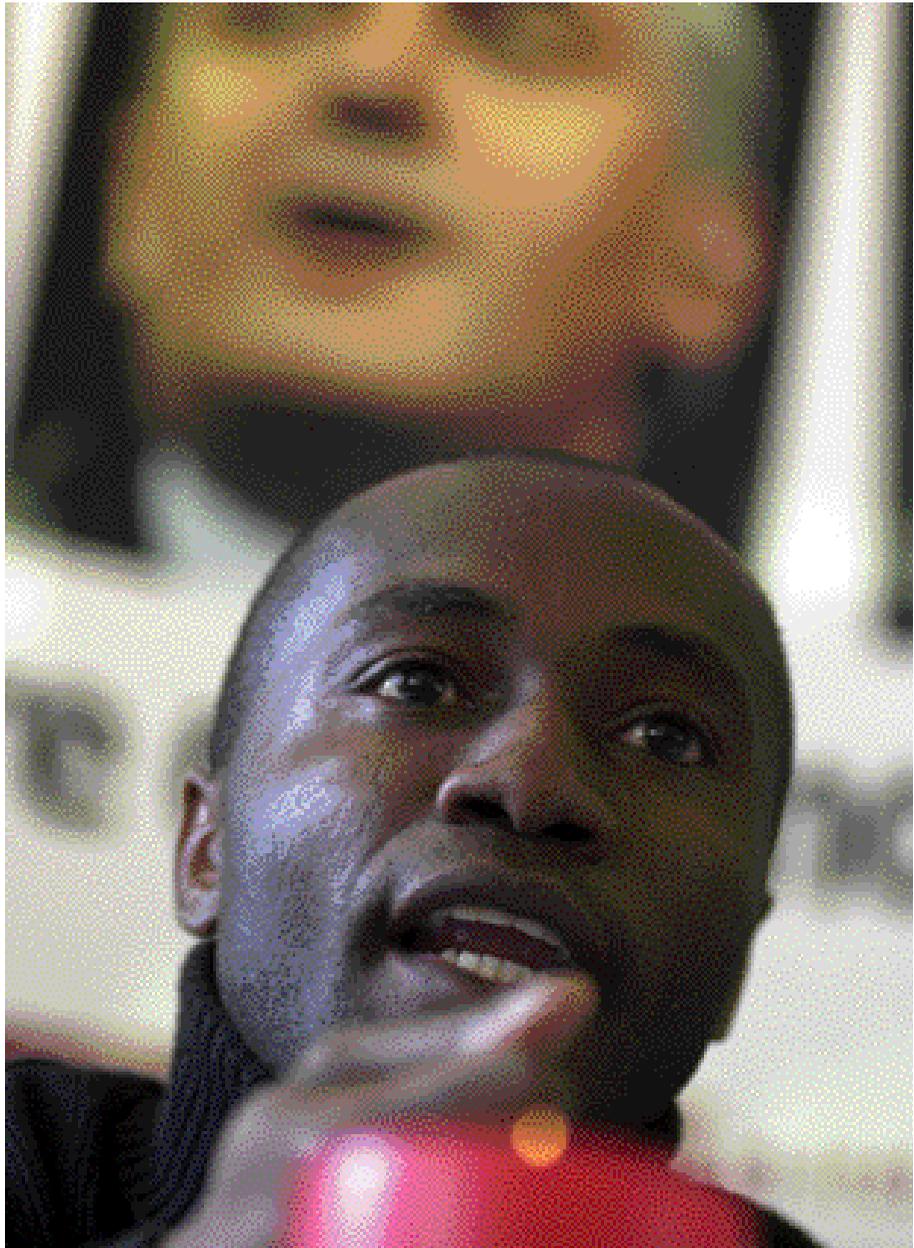
There is a need for comprehensive anti-racism training packages which should be delivered to all government staff. This training should not be left to the discretion of any government department for delivery to staff; it should be mandatory. Such education and training for people working in institutions and services should work to break down stereotypes and encourage interaction and shared understanding. It was suggested to incorporate this into induction training for all new staff as well as ensuring current staff are included. Education for minority ethnic communities was also recommended specifically around their rights and government legislation. Recommendations were also made in relation to the accreditation and recognition of qualifications and educating employers to accept non-Irish credentials.

5. Better media representation

Steps should be taken to prevent the media portraying members of minority ethnic communities in a negative light.

6. Development of NGOs representing minority ethnic groups

Existing NGOs should comprise a better representation from members of minority ethnic groups and that representatives should be funded to develop networks and grow. It was also recommended that new organisations should be established that would be entirely independent bodies and would not be funded by the government and therefore compromised in their objectivity.



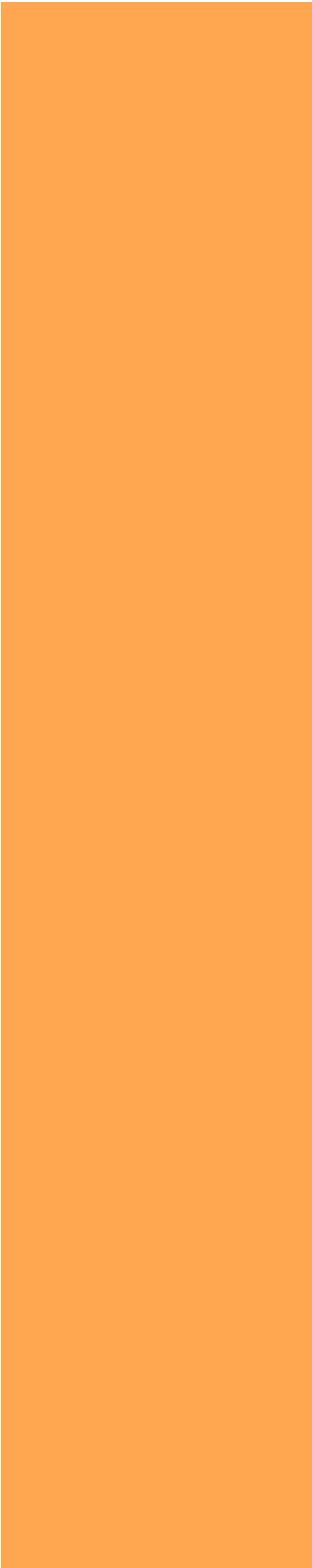
Chinedu Onyejelem, Editor & Publisher of the multicultural newspaper, Metro Eireann, speaking at the launch of Amnesty International's campaign calling for Leadership Against Racism in May 2001

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Annex 2 – Suggested Indicators

It is suggested that performance indicators and metrics of institutional and state racism should be developed, along with an effective and transparent system for monitoring those indicators and metrics. While a definitive statement of such indicators and metrics is outside the ambit of this research and report, the following possible indicators, drawn from international human rights standards, are suggested as a useful starting point for such a process. However it is underscored that the following suggestions of factual and circumstantial indicators are not exhaustive or comprehensive.

1. A disproportionate number of persons belonging to one or more minority ethnic groups (the definition of minority groups to include members of the Traveller community), who experience social exclusion and/or economic disadvantage
2. Insufficient or no special measures to address all disproportionately higher rates of poverty, social exclusion, educational disadvantage, criminality, etc experienced by minority ethnic groups, or other indicators of social exclusion or economic disadvantage
3. A disproportionate number of persons belonging to one or more minority ethnic groups who are wholly or partially excluded from the benefits accruing to the majority community, from a state law, policy or measure
4. In the absence of data on points 1, 2, 3 above, including where data is inadequately or inappropriately collected or disaggregated, the fact that a law, policy or practice has a significant potential to result in the social exclusion and/or economic disadvantage and/or exclusion from state benefits of a disproportionate number of persons belonging to one or more minority ethnic groups
5. Insufficient or no independent and effective mechanisms to ensure that all proposed laws, policies or practices that aim to treat one or more minority ethnic groups differently than the majority population, are systematically checked for their demonstrably meeting the principles of necessity and proportionality
6. Insufficient or no independent and effective mechanisms to ensure that all proposed laws, policies and practices are systematically proofed for their potential indirectly discriminatory effects on minority groups
7. Insufficient or no independent and effective mechanisms to ensure that laws, policies and practices, once in force, are systematically monitored and reviewed for potential indirectly discriminatory effects on minority groups, and to ensure that the principles of non-discrimination and proportionality are obeyed in practice, particularly in relation to measures relating to terrorism, immigration, nationality, deportation of non-citizens from the state, etc.
8. A disproportionately high number of complaints relating to acts of racial discrimination brought to any of the relevant authorities

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9. A disproportionately low number of complaints of racial discrimination brought to any of the relevant authorities (such a statistic should not be viewed as necessarily positive), and/or a disproportionately low rate of prosecutions and convictions relating to acts of racial discrimination brought to any of the relevant authorities
 10. Insufficient or no training in anti-racism and human rights for state officials at all levels
 11. Insufficient or no information on the behaviour of state officials vis-à-vis persons belonging to minority ethnic groups, including on the effectiveness of any training they receive in addressing attitudes and behaviour
 12. The number and percentage of persons belonging to minority ethnic groups who are held in prison or preventive detention, mental health facilities, holding areas in airports, etc.
 13. The handing down by courts or other tribunals of harsher or inappropriate sanctions against persons belonging to minority ethnic groups, or treating complaints by persons from minority ethnic groups less favourably
 14. Insufficient or no data on points 10, 11, 12 and 13 above
 15. A disproportionately low representation of persons belonging to one or more minority ethnic groups in the Oireachtas, national and local government, and at all levels of public bodies
 16. A disproportionately low participation of one or more minority ethnic groups in official consultation processes